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Ed Edmonds

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# A MOST INTERESTING PART OF BASEBALL'S MONETARY STRUCTURE - SALARY ARBITRATION IN ITS THIRTY- FIFTH YEAR

ED EDMONDS\*

## I. INTRODUCTION

On Monday, February 11, 1974, Minnesota Twins (Twins) pitcher Dick Woodson, Major League Baseball Players Association (the "Players Association") attorney Richard Moss, Twins owner Clark Griffith, and American League attorney James P. Garner all met in a room before arbitrator Henry Platt for more than four hours in Major League Baseball's (MLB) first salary arbitration hearing.<sup>1</sup> The historic hearing and Platt's decision in favor of Woodson marked the first of the 487 hearings conducted during the thirty-five years since the beginning of baseball's single or final offer arbitration system.<sup>2</sup> Although Woodson won his hearing and an award of his figure of \$30,000 instead of Griffith's offer of \$23,000, the pitcher remained bitter about his treatment by Griffith.<sup>3</sup> Griffith was just as unhappy after losing all three of his hearings that February and reacted angrily: "It cost me about \$15,000. But I'll find some way to get my money back. I'll trade 'em."<sup>4</sup>

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\* Associate Dean for Library and Information Technology and Professor of Law, Notre Dame Law School. A.B., University of Notre Dame, 1973; M.L.S., University of Maryland, 1974; J.D. University of Toledo, 1978. I want to thank Jose Aguirre, Johnny McDermott, Rachel Newsted, Joe Pangrac, and Matt Reedy, the research assistants who worked with me this past summer on salary arbitration research.

1. Murray Chass, *50 Big Leaguers Seek Arbitration*, N.Y. TIMES, Feb. 12, 1974, at 25; Alex Sachare, *A's Lead In Salary Hassles*, OCALA STAR-BANNER (Ocala, FL), Feb. 12, 1974, at 2B; *Baseball Innovation - 'Umpires' For Salaries*, ST. PETERSBURG TIMES, Feb. 12, 1974, at 1-C. See also ROGER I. ABRAMS, *THE MONEY PITCH: BASEBALL FREE AGENCY AND SALARY ARBITRATION* 143 (2000).

2. There was no salary arbitration in 1976 and 1977. Owners have won 280 of the hearings, fifty-seven percent. Maury Brown, *Breaking Down How Salary Arbitration Functions in MLB*, BIZOFBASEBALL.COM, [http://www.bizofbaseball.com/index.php?option=com\\_content&view=article&id=2916;breaking-down-how-salary-arbitration-functions-in-mlb&catid=26;editorial&itemid=39](http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=2916;breaking-down-how-salary-arbitration-functions-in-mlb&catid=26;editorial&itemid=39).

3. Murray Chass, *Woodson Tells Tales of Griffith Past*, N.Y. TIMES, May 19, 1974, at S7.

4. The quotation originally appeared in an article in the *Minneapolis Star*. After Bowie Kuhn called Griffith, he denied making the statement. *Morning Briefing: Walther Says the Chief Steward*

Infielder Steve Braun and outfielder Larry Hisle survived the season.<sup>5</sup> Woodson, however, did not. On May 4, the Twins traded Woodson to the New York Yankees for minor league pitcher Mike Pazik.<sup>6</sup> By August, Woodson was optioned to Syracuse, and the hurler claimed he was “blackballed” because he used the arbitration process.<sup>7</sup> He never pitched in the major leagues again.<sup>8</sup>

The era of baseball salary arbitration had begun. During the first season, twenty-nine players proceeded to hearings, and the owners edged out the players by winning sixteen and losing thirteen.<sup>9</sup> Nine of the cases involved

*at Indy Is 1000 M.P.H. Behind*, L.A. TIMES, Mar. 2, 1974, at B2; Deane McGowan, *Fine No Problem to Rose Now, People in Sports*, N.Y. TIMES, Feb. 28, 1974, at 48. Griffith had been one of the twenty-two owners who voted for salary arbitration. Only Charles Finley of the Oakland Athletics and Gussie Busch, at the urging of Anheuser-Busch's labor chief Dick Meyer, voted against arbitration. After his loss to Woodson, Griffith also quipped, “[t]his is going to kill us.” JOHN HELYAR, *LORDS OF THE REALM* 161 (1994).

5. Braun would be drafted by the Seattle Mariners on November 5, 1976, in the expansion draft. Hisle remained with the Twins through the 1977 season. On November 2, 1977, he became a free agent. After playing in 142 games for the Milwaukee Brewers in 1978, Hisle concluded his 14-year career with limited appearances from 1979-1982.

6. *Yanks, Twins Swap Hurlers*, LAKELAND LEDGER (Florida), May 5, 1974, at 2C. Woodson spent the remainder of the season in Syracuse pitching in five games. Woodson split time in 1975 with the Spokane Indians and the Richmond Braves. Woodson retired after the 1975 season. He finished his career with a 34-32 pitching ledger during five seasons with the Minnesota Twins (Twins) and the New York Yankees (Yankees). Pazik, the Yankees first round choice in the 1971 draft—thirteenth overall pick—pitched in a total of thirteen games in three seasons for the Twins (1975-1977) where he amassed a 1-4 won-lost record and a 5.79 ERA.

7. *Pitcher Says He's 'Blackballed'*, ST. PETERSBURG TIMES, Aug. 2, 1974, at 1-C. Ed Kranepool of the New York Mets offered an interesting observation of the process at that time of the first hearings, “[a]ny fringe player who beats a club in arbitration is a fool. He's a cinch to be cut before spring training – or at least before the season starts.” Dick Young, *Young Ideas - Kranepool Arbitration Tip*, SPORTING NEWS, Mar. 2, 1974, at 14.

8. *Dick Woodson Player Page*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/w/woodsdi01.shtml?redir> (last visited Oct. 19, 2009).

9. Murray Chass, *Even Some Losers Emerge as Winners in Baseball's New Arbitration Procedure*, N.Y. TIMES, Mar. 3, 1974, at 189; see also Jerome Holtzman, *Review of 1974: Summation of Year's Activities*, OFFICIAL BASEBALL GUIDE FOR 1975 301. The players who won their hearings were Sal Bando (Oakland Athletics), Steve Braun (Minnesota Twins), Darrell Evans (Atlanta Braves), Rollie Fingers (Oakland Athletics), Wayne Granger (New York Yankees), Larry Hisle (Minnesota Twins), Ken Holtzman (Oakland Athletics), Reggie Jackson (Oakland Athletics), Darold Knowles (Oakland Athletics), Dave McNally (Baltimore Orioles), Norm Miller (Atlanta Braves), Bill Sudakis (New York Yankees), and Dick Woodson (Minnesota Twins). The players who lost their hearings were Stan Bahnsen (Chicago White Sox), Paul Blair (Baltimore Orioles), Ken Brett (Pittsburgh Pirates), Tim Foli (Montreal Expos), Clarence Gaston (San Diego Padres), Bobby Grich (Baltimore Orioles), Jack Heidemann (Oakland Athletics), Ted Kubiak (Oakland Athletics), Carlos May (Chicago White Sox), Gene Michael (New York Yankees), Marty Perez (Atlanta Braves), Cookie Rojas (Kansas City Royals), Joe Rudi (Oakland Athletics), Duke Sims (New York Yankees), Gene Tenace (Oakland Athletics), and Frank Tepedino (Atlanta Braves). *Id.*

Charles Finley and players for the Oakland Athletics.<sup>10</sup> MLB's system of salary arbitration was negotiated as part of the third Basic Agreement reached in February and March 1973 between the Players Association and MLB.<sup>11</sup> Along with the Ten-and-Five Rule, also known as the "Curt Flood Rule" for the St. Louis Cardinals (Cardinals) outfielder who sued Bowie Kuhn after refusing to accept a trade to the Philadelphia Phillies in 1969, the salary arbitration procedure has become a significant factor in driving salaries upward in baseball.<sup>12</sup> Although the system has generated much negative reaction amongst owners and a number of attempts to eliminate the process through negotiations with the Players Association, the basic structure has changed little since its adoption in 1973.

To fully understand the salary structure of a MLB team's roster, one must appreciate the component parts and the impact of the arbitration-eligible players' place within that structure. Players in this category occupy the middle group between players with no leverage and those in the free agent group with substantial leverage. This Article will start with a brief history of the development of salary arbitration. The next section will discuss the three categories of players in baseball: (1) those without eligibility for salary arbitration, (2) those players eligible for salary arbitration prior to free agency, and (3) players who are eligible for free agency and the impact of salary arbitration on the free agent group.

The next section will analyze the 2009 class of free agents offered salary arbitration by their teams. This section will be followed by a discussion of players in the first category, those without arbitration eligibility, with a focus

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10. *Id.*

11. LEE LOWENFISH, *THE IMPERFECT DIAMOND: A HISTORY OF BASEBALL'S LABOR WARS* 217 (1990). See also CHARLES P. KORR, *THE END OF BASEBALL AS WE KNEW IT: THE PLAYERS UNION, 1960-81* 126-30 (2002); Murray Chass, *Baseball Peace Arrives With 3-Year Accord*, N.Y. TIMES, Feb. 26, 1973, at 39. Red Smith's column covering the agreement took a number of jabs at the owners and Congressmen. In commenting on the Congressional inaction, Smith offered the following assessment:

In the Flood decision, as in a number of cases earlier, the Supreme Court invited Congress to take such action, but up to now the boys on Capitol Hill haven't twitched. Apparently they fear that if they required baseball to conform to the law, their constituents would regard this as an attack on motherhood, a denunciation of apple pie, a desecration of the flag. It is difficult to believe that American voters favor slavery that ardently, but Congressmen think they do.

Smith concluded his column by specifically discussing the new arbitration procedure and noting that "[a]t long last, labor relations in baseball advance into the Pleistocene period." Red Smith, *Responsible View*, N.Y. TIMES, Mar. 2, 1973, at 25.

12. Chass, *supra* note 9. The Ten-and-Five Rule allowed a player with ten years of major league experience and five with the same team to veto a trade. *Id.*

on three current stars of the game: Prince Fielder, Albert Pujols, and Tim Lincecum. The next section will consider David Price, Francisco Liriano, and the first group of players to reach arbitration eligibility, the "Super Twos." This section will be followed by one discussing the recent advent of the "file-and-go" strategy used by a small number of teams.

The remainder of this Article will concentrate on an analysis of the 2009 salary arbitration class with a particular emphasis on the forty-six players and teams who exchanged figures by the January 20, 2009 deadline and the three hearings that resulted from the process in 2009. The final section of this Article will be a case study of Joe Crede's career and salary history.

## II. A BRIEF HISTORY OF THE STRUCTURE OF SALARY ARBITRATION

The adoption of the salary arbitration system in 1973 and a victory over the owners before the National Labor Relations Board over a refusal to disclose salary information to the union and the players was a major coup for the relatively young Players Association.<sup>13</sup> In 1974 and 1975 the system produced a number of positive results for players regardless of whether they won or lost their hearings. The McNally-Messersmith arbitration decision<sup>14</sup> and the general climate of labor relations in baseball produced a lockout during spring training in 1976, and salary arbitration was suspended for that year as well as 1977.<sup>15</sup> When the fourth Basic Agreement was reached in 1976, the salary arbitration system that was used in 1974 and 1975 was modified by requiring that a player who was now eligible for free agency could only proceed to arbitration through consent of both the player and the team.<sup>16</sup> Previously, a player had the right to decline an arbitration offer from the team. Furthermore, free agency was granted to players with six years of

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13. See Red Smith, *A New Dimension Called Fairness*, N.Y. TIMES, Feb. 1, 1974, at 21; Red Smith, *Solomon and the Wage Slaves*, N.Y. TIMES, Feb. 18, 1974, at 35; Red Smith, *The Vassals Are Restless*, N.Y. TIMES, Jan. 20, 1974, at § 5; *Washington Group Makes Late New Bid to Get Padres*, N.Y. TIMES, Jan. 9, 1974, at 27.

14. Nat'l & Am. League Prof'l v. Major League Players Assn., 66 Lab. Arb. Rep. 101 (1975) (Seitz, Arb.).

15. In 1976 the lockout from March 1-17 suspended arbitration, and a new agreement was not reached until July. In 1977, all players with contracts that expired after the 1976 season were declared free agents so no salary arbitration took place again. PAUL D. STAUDOHAR, *THE SPORTS INDUSTRY AND COLLECTIVE BARGAINING* 42 (2d ed. 1989). See also, Red Smith, *In the Spring an Owner's Fancy*, N.Y. TIMES, Mar. 19, 1976, at 55; Red Smith, *In Baseball the Score is 369-1*, N.Y. TIMES, June 14, 1976, at 56; *Labor History: A New Beginning? Baseball's New Labor Agreement Marks a Movement Away From Its Rocky Past*, PITT. POST-GAZETTE, Oct. 25, 2006, at D9.

16. MARVIN MILLER, *A WHOLE DIFFERENT BALLGAME: THE SPORT AND BUSINESS OF BASEBALL* 267-68 (1991); Murray Chass, *New Baseball Contract Limits Reserve System*, N.Y. TIMES, July 13, 1976, at 1 [hereinafter *New Baseball Contract*].

credited service.<sup>17</sup> During the negotiations for a new agreement in 1980, ownership pressed for the elimination of salary arbitration as well as individual negotiations for wages with the creation of a fixed salary scheme and compensation for a team losing a player to free agency.<sup>18</sup> However, the resulting agreement actually reduced the eligibility for arbitration to two years of service.<sup>19</sup> In 1985, after lengthy negotiations throughout the season on a new Basic Agreement, the players approved a strike that lasted only two days, August 6 and 7.<sup>20</sup> A new agreement was reached increasing eligibility for salary arbitration from two years to three years of credited service beginning in 1986.<sup>21</sup> The Players Association staved off an attempt by ownership to cap the size of a salary increase gained in arbitration.

In 1990 MLB locked out players for thirty-two days during spring training.<sup>22</sup> The season began one week late on April 9. The playoffs were rescheduled and started three days later to allow a full 162 game schedule.<sup>23</sup> Otherwise, the late start would have cost four games on the schedule. Owners were seeking a salary cap and a pay-for-performance system for all players with less than six years in the league to replace salary arbitration.<sup>24</sup> The players were seeking an increase in eligibility for salary arbitration back to the two-year level that existed before the 1986 agreement, protection against ownership collusion, and an increase in roster size from twenty-four to twenty-five. The eventual agreement created the "Super Twos" category for salary arbitration<sup>25</sup> and instituted treble damages for collusion.<sup>26</sup>

In 1994, a 232-day strike that began on August 12 caused the cancellation of the remainder of the 1994 season, the playoffs and the World Series, and the first eighteen games of the 1995 schedule.<sup>27</sup> The owners' proposal included a seven-year contract with a salary cap phasing in over four years.<sup>28</sup>

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17. *New Baseball Contract*, *supra* note 16, at 46.

18. MILLER, *supra* note 16, at 290. *See also* KORR, *supra* note 11, at 193-96.

19. MILLER, *supra* note 16, at 291.

20. *Id.* at 338.

21. *Id.* at 337-38. *See also*, PAUL DICKSON, *THE DICKSON BASEBALL DICTIONARY* 736 (3d ed. 2009).

22. MILLER, *supra* note 16, at 353.

23. *Id.*

24. *Id.* at 354.

25. DICKSON, *supra* note 21, at 736.

26. HELYAR, *supra* note 4, at 420-24.

27. Ronald Blum, *Play Ball: Owners Take Players' Return-to-Work Offer; 144-Game Schedule Set to Begin April 26*, AKRON BEACON J., Apr. 3, 1995, at A1.

28. Ross Newhan, *Owners' Proposal Seeks Salary Cap, 50-50 Revenue Split; Baseball: Plan Also Would End Arbitration. Fehr Not Impressed*, L.A. TIMES, June 15, 1994, at C5.

Salary arbitration would have been eliminated with free agency available after four years, and owners would have a right of first refusal for players with four to six years of service.<sup>29</sup>

In 1995, ownership proposed a switch from a sole arbitrator to a panel of three for a limited number of hearings.<sup>30</sup> Two hearings were decided by panels and both cases produced victories by management.<sup>31</sup> Believing that the panels produced better results, MLB pushed for a permanent change.<sup>32</sup> One-half of the decisions in 1998 were made by three-arbitrator panels, and in 1999, eight of the eleven decisions were made by panels instead of a single arbitrator.<sup>33</sup> With the transition to all three-arbitrator panels beginning in 2000, the structure of baseball salary arbitration has remained the same for much of this first decade of the twenty-first century.

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29. *Id.*

30. Murray Chass, *Owners Propose Changes in Arbitration*, N.Y. TIMES, Dec. 5, 1995, at B16.

31. "In the first baseball salary case decided by three arbitrators, the Baltimore Orioles won against third baseman Leo Gomez Saturday. Usually, one arbitrator decides a case. But owners proposed a shift to three-person panels in labor negotiations this spring, and the sides agreed to try it in three cases." Chuck Johnson, *White Sox Sign Kruk to DH*, USA TODAY, May 15, 1995, at 6C. Leo Gomez lost his case to the Baltimore Orioles when the panel of Robert Creo, Theodore High, and Ira Jaffe selected the team's offer of \$925,000 over Gomez's request for \$1,850,000. *Gomez Must Make Do With \$925,000*, AKRON BEACON J., May 14, 1995, at D4. The Gomez hearing was the first one in 1995 after owners refused to allow the process during the normal February time frame. *Id.* With the number of scheduled hearings that are cancelled each year because of settlements just prior to the hearing, a third case with a panel did not occur in 1995. An order from the National Labor Relations Board and a decision by United States District Court Judge Sonia Sotomayor helped break the logjam in negotiations. *Silverman v. Major League Baseball Player Relations Committee*, 880 F. Supp. 246, 261 (S.D.N.Y. 1995). See also James C. McKinley Jr., *Strike-Zone Arbitrator; Sonia Sotomayor*, N.Y. TIMES, Apr. 1, 1995, at 1. The Alex Fernandez-Chicago White Sox panel of Ralph Berger, Mort Mitchnick, and Nicholas Zumas accepted the Chicago offer of \$3,250,000 over Fernandez's request of \$3,900,000. *Mitchell's Sore Knee a Pain For Japanese*, DENV. ROCKY MTN. NEWS, May 23, 1995, at 12B; Paul Hoynes, *Cubs Flip Over Their New-Look Rotation*, CLEV. PLAIN DEALER, May 28, 1995, at 8D; Curt Rallo, *Chisox Pitchers Refusing to Panic, Chicago White Sox Notebook*, SOUTH BEND TRIB., May 25, 1995, at B4.

32. Chass, *supra* note 30.

33. The last of the single panel decisions involved James Duff deciding the Mariano Rivera-New York Yankees decision; Jerome Ross deciding the Brian Hunter-Detroit Tigers case; and Nicholas Zumas deciding the Mark Grudzielanek-Los Angeles Dodgers case. Rivera won his case while the Detroit Tigers and Los Angeles Dodgers lost their cases. Buster Olney, *Strawberry Is Made Sick By a Reaction to Therapy*, N.Y. TIMES, Feb. 28, 1999, § 8, at 3 (covering the Rivera case); Murray Chass, *Arbitrator Awards Rivera a Salary of \$4.25 Million*, N.Y. TIMES, Feb. 19, 1999, at D4; John Lowe & Drew Sharp, *Hunter Eager for Return to '97 Form*, DET. FREE PRESS, Feb. 18, 1999. *Briefs*, SOUTH BEND TRIB., Feb. 14, 1999, at C9; Jason Reid, *The Inside Track; Newswire; Dodgers' Grudzielanek Loses Arbitration Case*, L.A. TIMES, Feb. 12, 1999, at D2.

## III. THE BASIC SALARY STRUCTURE

The salary structure in MLB divides all players into three groups. The first group is controlled under the reserve system in a fashion similar to that prior to the McNally-Messersmith decision.<sup>34</sup> They are bound to one team, and they lack any leverage with respect to their one employer.<sup>35</sup> These players with limited major league experience are usually paid at a figure close to the minimum negotiated by the Players Association in the basic agreement, and often are not paid anywhere close to their market value.<sup>36</sup> Minor league players who are not placed on the forty-man major league roster can become a free agent after seven different playing seasons under Rule 55.<sup>37</sup>

The second group includes all players who have accrued enough service time to satisfy the criteria to become arbitration-eligible. Players first become eligible if they either have three years of credited service or fall into the “Super Twos” category as defined in the second paragraph of Article VI, F (1) covering eligibility in the current Basic Agreement:

[A] Player with at least two but less than three years of Major League service shall be eligible for salary arbitration if: (a) he has accumulated at least 86 days of service during the immediately preceding season; and (b) he ranks in the top (17%) (rounded to the nearest whole number) in total service in the class of Players who have at least two but less than three years of Major League service, however accumulated, but with at least 86 days of service accumulated during the immediately preceding season.<sup>38</sup>

This group enjoys the opportunity to seek a closer estimate of their actual market value because salary arbitration focuses on comparing players to the salary levels of similar players.<sup>39</sup>

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34. See generally Bruce Lowitt, *Free-Agency Era Opens in Baseball: A Panel Shoots Down Reserve Clause; Players Peddle Their Services For the First Time*, ST. PETERSBURG TIMES, Oct. 22, 1999, at Sports.

35. See John J. Siegfried, *Sports Player Drafts and Reserve Systems*, 14 CATO. J. 1 (Winter 1995).

36. *Id.*

37. Rule 55: Minor League Free Agency, SOXPROSPECTS.COM, <http://wiki.soxprospects.com/Rule+55> (last visited Aug. 29, 2009).

38. 2007-2011 BASIC AGREEMENT, art. VI, F(1), MLB.COM, <http://www.mlb.com/pa/info/cba.jsp> (last visited on Aug. 28, 2009 [hereinafter BA]).

39. *Id.* art. VI, § F(13).



The third group is those with six years of service who have attained free agent status.<sup>40</sup> Players in this category impact salary arbitration in two ways. A team can offer arbitration to a free agent-eligible player who spent the prior year with that team.<sup>41</sup> If the player accepts, that player is considered signed for the upcoming year.<sup>42</sup> If the player declines arbitration, a system of dividing all free agents into three categories, Type A, Type B, or unranked free agents triggers compensation.<sup>43</sup>

#### IV. FREE AGENTS AND SALARY ARBITRATION

The first significant deadline in salary arbitration takes place each year during a fifteen-day period following the final game of the World Series when a player eligible for free agency is allowed to “give notice of his election of free agency . . . .”<sup>44</sup> The 2008 World Series ended on Wednesday, October 29, with the Philadelphia Phillies’s (Phillies) 4-3 victory over the Tampa Bay Devil Rays (Rays) in game five.<sup>45</sup> That made the fifteen-day deadline to file for free agency November 13. Arbitration becomes a factor under section (3) of Article XX.<sup>46</sup> The former team of a free agent may offer salary arbitration to that player by December 1.<sup>47</sup> If the player accepts the team offer, the parties must either negotiate a salary for the upcoming season or proceed to a hearing.<sup>48</sup> Thus, both the team and the player must carefully consider both making and accepting the offer. Teams often do not offer arbitration because they expect that the salary produced by the process far exceeds the amount that the team wants to pay that player. Teams will, however, offer arbitration to players with substantial free agent marketability to avail themselves of the compensation system outlined under Article XX, section B4.<sup>49</sup> Players with such substantial marketability typically will not accept arbitration because they do not want to limit their negotiations solely to one team.<sup>50</sup> The ability to

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40. *Id.* art. XX, § B(1).

41. *Id.* art. XX, § B(3).

42. *Id.*

43. *Id.* art. XX, § 4

44. *Id.* art. XX, § B(2)(a).

45. Phil Sheridan, *WORLD CHAMPS!: 28 Years Later, Phillies Again Are Baseball’s Best: A Season of Glory is Capped by Euphoria*, PHIL. INQUIRER, Oct. 30, 2008, at A1; Todd Zolecki, *Chills, Thrills: Finish Off Rays for World Series Crown*, PHIL. INQUIRER, Oct. 30, 2008, at E1.

46. BA, *supra* note 38, art. XX, § B(3).

47. *Id.*

48. *Id.*

49. *Id.* art. XX, § B(4).

50. *Id.* art. XX, § B(2)(b).

consider multiple offers is generally preferable to either negotiating with just one team or submitting the decision to an arbitration panel. The Elias Sports Bureau annually ranks players into three categories: Type A, Type B, or unranked in a document officially titled, "A Statistical System for Ranking of Players."<sup>51</sup> Type A free agents represent the top twenty percent of a position grouping.<sup>52</sup> Type B free agents represent players in the top forty percent of a position grouping who are not Type A free agents.<sup>53</sup> If a team loses a Type A free agent, the team losing that player receives two compensatory draft picks.<sup>54</sup> If the signing team's first-round pick is below the top fifteen picks in the draft, the signing team loses that pick to the free agent's former team plus a supplemental or "sandwich pick" between the first and second-rounds.<sup>55</sup> If the signing team has a choice in the first fifteen, the free agent's former team receives the signing team's second-round choice plus the sandwich pick.<sup>56</sup> The compensation for losing a Type B free agent is a supplemental selection.<sup>57</sup>

On Monday, December 1, 2008, twenty-four free agents were offered salary arbitration by their teams, twelve from each league.<sup>58</sup> The American League players on the list were: Milton Bradley (Texas Rangers), A.J. Burnett (Toronto Blue Jays), Paul Byrd (Boston Red Sox), Orlando Cabrera (Chicago White Sox), Jon Garland (Los Angeles Angels of Anaheim), Mark Grudzielanek (Kansas City Royals), Raul Ibanez (Seattle Mariners), Darren Oliver (Los Angeles Angels of Anaheim), Dennys Reyes (Twins), Francisco Rodriguez (Los Angeles Angels of Anaheim), Mark Teixeira (Los Angeles Angels of Anaheim), and Jason Varitek (Boston Red Sox).<sup>59</sup> The National League list consisted of Casey Blake (Los Angeles Dodgers), Juan Cruz (Arizona Diamondbacks), Brian Fuentes (Colorado Rockies), Orlando Hudson (Arizona Diamondbacks), Derek Lowe (Los Angeles Dodgers), Brandon Lyon (Arizona Diamondbacks), Oliver Perez (New York Mets), Manny Ramirez (Los Angeles Dodgers), C.C. Sabathia (Milwaukee Brewers), Ben Sheets

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51. *Id.* art. XX, § B(4)(b).

52. *See id.* The five position groupings are: (1) First baseman, designated hitters, outfielders; (2) Second baseman, shortstops, and third baseman; (3) catchers; (4) starting pitchers; and (5) relief pitchers.

53. *Id.*

54. *Id.* art. XX, § B(2)(c).

55. *Id.* art. XX, § B(2)(d).

56. *Id.*

57. *Id.* art. XX, § B(2)(c)

58. Tim Dierkes, *24 Free Agents Offered Arbitration*, MLBTRADERUMORS.COM, Dec. 2, 2008, <http://www.mlbtraderumors.com/2008/12/x-free-agents-m.html>

59. *Id.*

(Milwaukee Brewers), Brian Shouse (Milwaukee Brewers), and David Weathers (Cincinnati Reds).<sup>60</sup>

Of this group of twenty-four, fifteen were Type A free agents and nine were Type B free agents.<sup>61</sup> The Type A free agents were: Burnett, Cabrera, Cruz, Fuentes, Hudson, Ibanez, Lowe, Oliver, Perez, Ramirez, Rodriguez, Sabathia, Sheets, Teixeira, and Varitek.<sup>62</sup> The Type B free agents were: Blake, Bradley, Byrd, Garland, Grudzielanek, Lyon, Reyes, Shouse, and Weathers.<sup>63</sup> A total of fifty-six American League free agents and sixty-seven National League free agents were not offered arbitration.<sup>64</sup> This figure proved to be important during the 2008-2009 off-season to the New York Yankees who signed Type A free agents A.J. Burnett, C.C. Sabathia, and Mark Teixeira.<sup>65</sup> The Basic Agreement limits the number of Type A and Type B free agents that a team can sign.<sup>66</sup> Because of the number of total free agents, the New York Yankees (Yankees) could sign Burnett, Sabathia, and Teixeira, and the compensation for the three former teams was determined by the rankings of these three Type A free agents.<sup>67</sup> The result was particularly significant for Sabathia's former team, the Milwaukee Brewers (Brewers), and Burnett's former team, the Toronto Blue Jays (Blue Jays).<sup>68</sup> Because Teixeira was the highest ranked of the three free agents, the Los Angeles Angels of Anaheim (Angels) received pick number twenty-five in the first round and pick number forty in the supplemental round.<sup>69</sup> The Blue Jays, however, received pick number thirty-seven in the supplemental round and pick number 104 in the third-round as compensation for the signing of Burnett.<sup>70</sup> The

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60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. See generally Mike Scarr, *24 Players Offered Salary Arbitration: CC, Manny, Tex, K-Rod, Burnett, Lowe Among Those Offered*, MLB.COM, Dec. 2, 2008, [http://mlb.mlb.com/news/article.jsp?ymd=20081202&content\\_id=3698166&vkey=hotstove2008&fext=.jsp](http://mlb.mlb.com/news/article.jsp?ymd=20081202&content_id=3698166&vkey=hotstove2008&fext=.jsp).

65. Tom Haudricourt, *Compensation Deterioration: Yankees' First Rounder Goes to Angels*, MILWAUKEE J. SENTINEL, Dec. 24, 2008, available at <http://www.jsonline.com/sports/brewers/36715009.html>.

66. BA, *supra* note 38, art. XX, § B(5)(a).

67. Haudricourt, *supra* note 65.

68. *Id.*

69. The Angels selected Michael Trout with pick number twenty-five and Tyler Skaggs with pick number forty. Lyle Spencer, *Draft Haul Leaves Halos 'Really Excited': Angels Address Needs for Power, Left-Handed Pitching*, MLB.COM, June 11, 2009, [http://losangeles.angels.mlb.com/news/article.jsp?ymd=20090611&content\\_id=5269762&vkey=news\\_ana&fext=.jsp&c\\_id=ana](http://losangeles.angels.mlb.com/news/article.jsp?ymd=20090611&content_id=5269762&vkey=news_ana&fext=.jsp&c_id=ana).

70. The Blue Jays selected James Paxton with pick number 37 and Jacob Marisnick with pick number 104. Paxton chose not to sign, and he will return to the University of Kentucky for his senior

Brewers first pick for losing Sabathia to the Yankees was pick number thirty-nine in the supplemental round.<sup>71</sup> The Brewers also received pick number seventy-three in the second-round.<sup>72</sup> Obviously, the Angels fared far better than the Blue Jays or Brewers. Interestingly, the Yankees did not sacrifice all of their high draft picks in 2009. The Yankees still retained a first-round pick in 2009 because of their failure to sign Gerrit Cole, their first-round selection in 2008.<sup>73</sup> The Yankees also failed to sign second-round choice Joseph Bittle, although they did sign 2008 first round supplemental pick Jeremy Bleich.<sup>74</sup> The Yankees used their first two round picks in the 2009 draft to select center

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season. Shi Davidi, *Blue Jays Sign Marisnick and Three Others, Canadians Paxton, Eliopoulos Walk*, WINNIPEG FREE PRESS, Aug. 29, 2009, available at [http://www.winnipegfreepress.com/sports/baseball/Blue-Jays-sign-Marisnick-and-three-others\\_-Canadians-Paxton\\_-Eliopoulos-walk.html](http://www.winnipegfreepress.com/sports/baseball/Blue-Jays-sign-Marisnick-and-three-others_-Canadians-Paxton_-Eliopoulos-walk.html); Erika Gilbert, *College Arms Highlight Jays' Draft; Jenkins First Hurler Taken in First Round Since Romero*, MLB.COM, June 12, 2009, [http://mlb.mlb.com/news/article.jsp?ymd=20090611&content\\_id=5270896&vkey=news\\_tor&fext=.jsp&c\\_id=tor](http://mlb.mlb.com/news/article.jsp?ymd=20090611&content_id=5270896&vkey=news_tor&fext=.jsp&c_id=tor); John Lott, *Blue Jays Let Draft Picks Go Unsigned*, NAT'L POST (Canada), Aug. 18, 2009, available at <http://www.nationalpost.com/m/story.html?id=1906437>.

71. The Brewers selected Kentrail Davis with pick number thirty-nine. *Brewers Make Six Selections on Day One of the MLB Draft*, MLB.COM, [http://milwaukee.brewers.mlb.com/news/press\\_releases/press\\_release.jsp?ymd=20090610&content\\_id=5241348&vkey=pr\\_mil&fext=.jsp&c\\_id=mil](http://milwaukee.brewers.mlb.com/news/press_releases/press_release.jsp?ymd=20090610&content_id=5241348&vkey=pr_mil&fext=.jsp&c_id=mil) (last visited Aug. 29, 2009); *Brewers Sign Supplemental First-Round Pick of Kentrail Davis; Club Also Signs Fourth-round Pick RHP Brooks Hall and 16th-round Pick SS Scooter Gennett*, MLB.COM, Aug. 17, 2009, [http://newyork.yankees.mlb.com/news/press\\_releases/press\\_release.jsp?ymd=20090817&content\\_id=6474546&vkey=pr\\_mil&fext=.jsp&c\\_id=mil](http://newyork.yankees.mlb.com/news/press_releases/press_release.jsp?ymd=20090817&content_id=6474546&vkey=pr_mil&fext=.jsp&c_id=mil).

72. The Brewers selected Maxwell Walla with pick number seventh-three. *Brewers Make Six Selections*, *supra* note 36. Dennis Semrau, *Brewers: Top Pick Arnett Signed, Ready to Pitch*, MADISON CAPITAL TIMES, June 15, 2009, available at [http://host.madison.com/sports/article\\_1d01c8d2-9203-5c17-a163-b89bc168c064.html](http://host.madison.com/sports/article_1d01c8d2-9203-5c17-a163-b89bc168c064.html).

73. Cole elected to accept a scholarship to UCLA instead of signing with the Yankees. Cole's agent was Scott Boras. "The Yankees will receive a compensation pick in next year's draft for failing to sign Cole, a right-hander from Orange Lutheran (Cal.) High School who throws 98 miles an hour with a hard slider and changeup." Tyler Kepner, *First-Round Pick Gerrit Cole Opts for College Over Yankees*, N.Y. TIMES.COM, Aug. 14, 2008, <http://bats.blogs.nytimes.com/2008/08/14/first-round-pick-gerrit-cole-opts-for-college-over-yankees/>. Cole was 4-8 with a 3.49 ERA in 15 games for the Bruins. *Id.* He allowed only fifty-seven hits in eighty-five innings, and he struck out one hundred four batters. *Id.*

74. Bittle twice failed to sign with the Yankees and pitched at the University of Mississippi. He did sign with the St. Louis Cardinals after he was selected in the fourth round of the 2009 draft. Bryan Hoch, *Signability a Factor for Yanks in Draft; Offering No Compensation, No. 29 Overall Pick a Critical One*, MLB.COM, June 4, 2009, [http://mlb.mlb.com/news/article.jsp?ymd=20090604&content\\_id=5137746&vkey=news\\_nyy&fext=.jsp&c\\_id=nyy](http://mlb.mlb.com/news/article.jsp?ymd=20090604&content_id=5137746&vkey=news_nyy&fext=.jsp&c_id=nyy). Bittle was also drafted by the Yankees in the forty-eighth round of the 2007 draft. *Id.* Bleich, a Stanford pitcher, signed for a \$700,000 bonus. Bryan Hoch, *Yanks Sign Bleich, But Not Top Pick Cole*, MLB.COM, Aug. 16, 2008, [http://mlb.mlb.com/news/article.jsp?ymd=20080815&content\\_id=3313861&vkey=news\\_nyy&fext=.jsp&c\\_id=nyy](http://mlb.mlb.com/news/article.jsp?ymd=20080815&content_id=3313861&vkey=news_nyy&fext=.jsp&c_id=nyy). See Tyler Kepner, *As Usual, Elbow Issue Doesn't Scare Yankees on Draft Day*, N.Y. TIMES, June 5, 2008, <http://bats.blogs.nytimes.com/tag/jeremybleich/?scp=3&sq=tyler%20kepner%20as%20usual,%20elbow%20issue%20doesn%27t%20scare%20yankees&st=cse>. This article analyzes Bleich's selection.

fielder Slade Heathcott with the twenty-ninth pick and catcher J.R. Murphy with the seventy-sixth pick.<sup>75</sup> Both players signed deals with just eleven hours to spare before the deadline imposed for signing draft picks.<sup>76</sup> Signing Heathcott and Murphy was important because the Yankees only received compensation one time for failing to sign these two top 2008 picks.<sup>77</sup>

Of the twenty-four free agents offered salary arbitration, only Darren Oliver of the Angels and David Weathers of the Reds accepted the offer. An analysis of Darren Oliver's career salary figures demonstrates the impact of arbitration eligibility, free agency, and performance on salaries stretched over a substantial major league career.<sup>78</sup> The story is an interesting one of rising to a significant multi-year deal when performance slid significantly before nearly retiring from the game before finding new life as a left-handed relief specialist. Oliver agreed to a deal with the Angels in mid-January 2009 for \$3.66 million.<sup>79</sup> Oliver, a fifteen-year veteran, made \$2 million in 2008 when he enjoyed a 7-1 won-loss record and a 2.88 ERA in 54 games.<sup>80</sup> Thus, he was able to negotiate a substantial raise for the current season. In 2007, Oliver played for \$1.5 million for the Angels, but Oliver had spent 2003-2006 playing for a salary at or below \$750,000 after signing a three-year, \$19 million contract with the Rangers in 2000.<sup>81</sup>

Oliver, the son of major leaguer Bob Oliver, was originally drafted by the Texas Rangers (Rangers) in the third round of the 1988 draft.<sup>82</sup> After pitching

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75. Heathcott, from Texas High School in Texarkana, Texas, signed for \$2,200,000. See Tim Bontemps, *Yankees Sign Heathcott, Murphy, Cotham*, Sept. 4, 2009, [http://www.nypost.com/p/blogs/minorleague/yankees\\_sign\\_heathcott\\_murphy\\_cotham\\_fcXxSPo88Ygtai0yNbt0FL](http://www.nypost.com/p/blogs/minorleague/yankees_sign_heathcott_murphy_cotham_fcXxSPo88Ygtai0yNbt0FL). He turned down a scholarship offer from 2009 College World Series champions LSU. *Id.* Murphy, from Pendleton School in Bradenton, Florida, signed for \$1,250,000. *Id.* Murphy turned down an offer from Miami. *Id.* Both contracts significantly exceed the recommended signing amount for draft choices announced by Major League Baseball. *Id.*

76. *Id.*

77. *Id.*

78. *Darren Oliver: Stats, News, and Photos*, ESPN.COM, <http://sports.espn.go.com/mlb/players/profile?playerId=2969> (last visited Oct. 19, 2009).

79. Lyle Spencer, *Oliver Inks One-year Deal With Angels; Halos Avoid Arbitration on Southpaw, Who Will Make \$3.655 Million*, MLB.COM, Jan. 16, 2009, [http://losangeles.angels.mlb.com/news/article.jsp?ymd=20090116&content\\_id=3747831&vkey=news\\_ana&fext=.jsp&c\\_id=ana](http://losangeles.angels.mlb.com/news/article.jsp?ymd=20090116&content_id=3747831&vkey=news_ana&fext=.jsp&c_id=ana).

80. *Cot's Baseball Contracts: Los Angeles Angels of Anaheim*, COT'S BASEBALL CONTRACTS, <http://mlbcontracts.blogspot.com/2005/01/los-angeles-angels-of-anaheim.html> (last visited Oct. 19, 2009); *Darren Oliver Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/o/oliveda02.shtml> (last visited Oct. 19, 2009) [hereinafter *Darren Oliver Statistics*].

81. Ken Daley, *Rangers Make Sharp Left Turn, Re-Sign Oliver*, DALLAS MORNING NEWS, Jan. 13, 2000, at 1B.

82. *1988 First-Year Players Draft: June Regular Phase*, MLB.COM, <http://mlb.mlb.com/>

with the Rangers from 1993 through July 31, 1998, Oliver was traded with Fernando Tatis and a player to be named later to the Cardinals for Royce Clayton, Todd Stottlemire, and a player to be named later.<sup>83</sup> Oliver pitched for the Cardinals for the remainder of 1998 and 1999. After making \$3.55 million for the 1999 season when he was 9-9 with a 4.26 ERA in 30 starting assignments, the Cardinals and Oliver parted company when they could not reach an agreement on a multi-year deal.<sup>84</sup> Oliver signed instead with his original team, the Rangers. Oliver's deal called for a signing bonus of \$6 million and base salaries of \$3 million for 2000, \$5 million for 2001, and \$5 million for 2002.<sup>85</sup> Unfortunately, for both the Rangers and Oliver, his performance in 2000 produced a 2-9 record and a 7.42 ERA in 21 games started.<sup>86</sup> After an 11-11 season with a 6.02 ERA in 2001 with the Rangers, they traded Oliver to the Boston Red Sox (Red Sox) on December 12, 2001, for Carl Everett.<sup>87</sup> After giving up thirty earned runs and seventy hits in fifty-eight innings for the Red Sox, they released him on July 2.<sup>88</sup> Seventeen days later Oliver signed with the Cardinals, but he was released on August 13 after starting five games for AA Memphis.<sup>89</sup> Oliver's career was obviously spiraling downward.

Oliver was forced after the 2002 season to look for a team that would give him a chance to restart his career in a different salary slot. He signed as a free agent with the Colorado Rockies (Rockies) on February 3, 2003, for \$350,000, only \$50,000 above the league minimum.<sup>90</sup> The Rockies received a substantial return on their investment when Oliver won thirteen games against eleven defeats, but Oliver sought free agency after the season by filing on October 26, 2003.<sup>91</sup> The Rockies had offered a \$750,000 contract in August

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mlb/history/ draft/draft.jsp?year=1988 (last visited Oct. 19, 2009).

83. See Rick Hummel, *Cardinals Trade Stottlemire, Clayton to Texas for Pitcher, Third Baseman*, ST. LOUIS POST-DISPATCH, Aug. 1, 1998, Sports, at 5. Mark Little was sent by the Rangers to the Cardinals on August 9.

84. See Rick Hummel, *Team Makes First Move to Keep Free-Agent Oliver*, ST. LOUIS POST-DISPATCH, Oct. 31, 1999, at D13. Oliver filed for free agency on October 29, 1999. See Benes, *Oliver, Olerud Are Among Group of 49 Filing For Free Agency*, ST. LOUIS POST-DISPATCH, Oct. 30, 1999, Sports, at 5.

85. The signing bonuses were paid in three increments: \$1.5 million for both 2001 and 2002 and \$3 million for 2003.

86. *Darren Oliver Statistics*, *supra* note 80.

87. T.R. Sullivan, *Clean Slate for Everett*, FORT WORTH STAR-TELEGRAM, Dec. 14, 2001, at 1S.

88. David Heuschkel, *Baerga on Disabled List: Reliever Gomes Gets Call*, HARTFORD COURANT, July 3, 2002, at C5.

89. *Darren Oliver Statistics*, *supra* note 80.

90. *Id.*

91. Thomas Harding, *Four Rockies Become Free Agents*, MLB.COM, Oct. 28, 2003,

for the 2004 season and also offered to extend the arbitration deadline in December to reach an agreement with Oliver.<sup>92</sup> If the Rockies had offered arbitration and Oliver had accepted, the system would have rewarded him with a substantial increase in salary based on his 2003 performance as compared to other starting pitchers. Oliver gambled on the free agency market. He turned down a \$1 million contract from the Detroit Tigers (Tigers) and he ended up accepting \$750,000 from the Florida Marlins (Marlins).<sup>93</sup> After pitching in eighteen games with a 2-3 record and a 6.44 ERA, the Marlins sold Oliver to the Houston Astros (Astros) in July.<sup>94</sup> Oliver pitched in only nine games for the Astros with two starts and fourteen innings pitched.<sup>95</sup> In the off-season, Oliver opted for free agency once more. He signed again with the Rockies as a free agent on January 22, 2005, but the Rockies released him on March 31.<sup>96</sup> He signed with both the Arizona Diamondbacks (Diamondbacks) and the Chicago Cubs (Cubs) during 2005, but he was released during the season by both teams after pitching only in the minor leagues and announced his retirement on May 21.<sup>97</sup> However, in December 2005 Oliver agreed to a minor league deal with the New York Mets (Mets) with the desire to make the team pitching out of the bullpen.<sup>98</sup>

Oliver was on his way home after being cut by the Mets when an injury caused the team to add him to the opening day roster.<sup>99</sup> He successfully resurrected his career by becoming a valuable thirty-five year-old reliever with the Mets pitching in forty-five games, finishing ten, winning four of five

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[http://mlb.mlb.com/news/article.jsp?ymd=20031028&content\\_id=595863&vkey=news\\_mlb&fext=js p&c\\_id=mlb](http://mlb.mlb.com/news/article.jsp?ymd=20031028&content_id=595863&vkey=news_mlb&fext=js p&c_id=mlb); Troy Renck, *Rockies Players Will Test Market*, DENVER POST, Oct. 28, 2003, at D7.

92. Mike Klis, *Rockies Should Have Kept Options Open With Oliver*, DENV. POST, Feb. 1, 2004, at C3.

93. *Id.*

94. Jose de Jesus Ortiz, *Astros Acquire Oliver From Marlins, Hunsicker Says Veteran Lefthander Will Fill Relief Role*, HOUS. CHRON., July 23, 2004, Sports, at 7.

95. *Darren Oliver Statistics*, *supra* note 80.

96. *Mets Sign Oliver, Feliciano, Parra; Release Ishii*, MLB.COM, Dec. 19, 2005, [http://newyork.mets.mlb.com/news/press\\_releases/press\\_release.jsp?ymd=20051219&content\\_id=1284051&vkey=pr\\_nym&fext=.jsp&c\\_id=nym](http://newyork.mets.mlb.com/news/press_releases/press_release.jsp?ymd=20051219&content_id=1284051&vkey=pr_nym&fext=.jsp&c_id=nym).

97. *Id.* See also David Vest, *Villarreal Leaves After Straining Shoulder*, ARIZ. REPUBLIC, Apr. 11, 2005, Sports, at 7C.

98. *Mets Sign Oliver*, *supra* note 96. Marty Noble, *Notes: Four Lefties Vying For 'Pen Job: Feliciano, Perez, Ring and Oliver Seeking Specialist Role*, MLB.COM, Mar. 23, 2006, [http://newyork.mets.mlb.com/news/article.jsp?ymd=20060323&content\\_id=1360605&vkey=spt2006 news&fext=.jsp&c\\_id=nym](http://newyork.mets.mlb.com/news/article.jsp?ymd=20060323&content_id=1360605&vkey=spt2006 news&fext=.jsp&c_id=nym).

99. Marty Noble, *Notes: Sudden Twist Has Oliver at Shea; Veteran Lefty Makes Unexpected Return to the Big Leagues*, MLB.COM, Apr. 4, 2006, [http://newyork.mets.mlb.com/news/article.jsp?ymd=20060403&content\\_id=1381435&vkey=news\\_nym&fext=.jsp&c\\_id=nym](http://newyork.mets.mlb.com/news/article.jsp?ymd=20060403&content_id=1381435&vkey=news_nym&fext=.jsp&c_id=nym).

decisions, and posting a 3.44 ERA while earning \$600,000.<sup>100</sup> Many players in the same situation as Oliver would likely have been out of baseball after 2005. Oliver was able to survive to the end of spring training with the Mets and accept a spot on the pitching staff because of an injury. After a solid season, he has been able to extend his career with a significant salary increase with the Angels.<sup>101</sup>

Oliver has been a strong contributor out of the bullpen for the 2009 Angels who acquired a new closer in Brian Fuentes, who formerly had that role with the Rockies, while Francisco Rodriguez, the Angels's previous closer, was allowed to move across the country to pitch for the Mets.<sup>102</sup> Rodriguez endured a hearing in 2008 and the panel agreed with the team that the closer deserved \$10 million instead of his request for \$12.5 million.<sup>103</sup>

The other free agent to accept arbitration in 2009 was David Weathers. Weathers had signed a two-year, \$5 million deal with the Cincinnati Reds (Reds) after the 2006 season.<sup>104</sup> In 2007, Weathers finished sixty games for the Reds while earning a save in thirty-three of those games.<sup>105</sup> Prior to 2008, however, the Reds signed free agent Francisco Cordero from the Brewers.<sup>106</sup> Weathers spent the 2008 season as a set-up man, and he finished the season with seventeen games finished but no saves.<sup>107</sup> Weathers requested \$4.6 million, and the Reds countered with an offer of \$3 million. The \$1.6 million difference between the parties left a midpoint of \$3.8 million. The two sides agreed on an annual deal for \$3.4 million with \$700,000 available in

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100. Steven Goldman, *It's a Fool Who Looks for Logic When Constructing a Bullpen*, N.Y. SUN, June 20, 2006, at 19.

101. *Darren Oliver Statistics*, *supra* note 80.

102. *Francisco Rodriguez Signs Three-Year Deal with the New York Mets*, THE BLEACHER REPORT, Dec. 9, 2008, <http://bleacherreport.com/articles/91080-francisco-rodriguez-signs-three-year-deal-with-the-new-york-mets>.

103. The arbitration panel consisted of Stephen Goldberg, Elizabeth Neumeier, and Steven Wolf. The hearing was held on February 21, 2008. *Angels Beat K-Rod in Arbitration; Perez Tops Mets*, USATODAY.COM, [http://www.usatoday.com/sports/baseball/2008-02-22-arbitration-roundup\\_N.htm](http://www.usatoday.com/sports/baseball/2008-02-22-arbitration-roundup_N.htm). Rodriguez still received a significant increase over his 2007 salary of \$7 million. Rodriguez had opted for free agency instead of accepting "an offer in the three-year, \$34-million range after 2007." Mike DiGiovanna, *Angels Report; Rodriguez Must Settle For \$10,000,000 Loss*, L.A. TIMES, Feb. 23, 2008, at D7.

104. *Guardado OK's Reds Minor League Pact*, SPORTINGNEWS.COM, Feb. 5, 2007, <http://www.sportingnews.com/yourturn/viewtopic.php?t=174390>

105. *David Weathers Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/w/weathda01.shtml> (last visited Oct. 19, 2009) [hereinafter *David Weathers Statistics*].

106. *Weathers Agrees to Deal with Reds*, ESPN.COM, Jan. 28, 2009, <http://sports.espn.go.com/mlb/news/story?id=3867120>.

107. *David Weathers Statistics*, *supra* note 105.



incentives for games finished.<sup>108</sup> The Reds also agreed to an option for \$3.7 million and \$400,000 buyout. However, when the Reds fell out of the National League Central race by losing fourteen of fifteen games from July 20 through August 4, they decided to part ways with Weathers by trading him to the Brewers on August 9 for a player to be named later.<sup>109</sup>

#### V. SALARIES FOR PLAYERS WHO HAVE NOT REACHED ARBITRATION ELIGIBILITY

To analyze the impact on salaries of players in the first group who have not attained salary arbitration eligibility, it is helpful to examine the recent cases of star players Prince Fielder, Albert Pujols, and Tim Lincecum. Their star statuses allowed them to negotiate salaries that exceeded the league minimum, but they still failed to top \$1 million until they were eligible for arbitration. By comparison, twenty-four out of the forty-six players, fifty-two percent, who exchanged figures with their teams in 2009 played for \$465,000 or less in 2008 when the league minimum was \$390,000.<sup>110</sup> That group included: Willy Aybar (\$401,200),<sup>111</sup> Brian Bannister (\$421,000),<sup>112</sup> Melky Cabrera (\$461,200),<sup>113</sup> Shawn Camp (\$405,000),<sup>114</sup> Edwin Encarnacion

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108. Mark Sheldon, *Reds Avoid Arbitration with Weathers: Reliever Signs One-Year Contract With Club Option For 2010*, MLB.COM, Jan. 28, 2009, [http://milwaukee.brewers.mlb.com/news/article.jsp?ymd=20090128&content\\_id=3779462&vkey=news\\_cin&fext=.jsp&c\\_id=cin](http://milwaukee.brewers.mlb.com/news/article.jsp?ymd=20090128&content_id=3779462&vkey=news_cin&fext=.jsp&c_id=cin).

109. Andrew Pentis, *Reds Send Weathers to Brewers: Veteran Reliever Rejoins Team He Pitched For From '98 to '01*, MLB.COM, Aug. 9, 2009, [http://cincinnati.reds.mlb.com/news/article.jsp?ymd=20090809&content\\_id=6335258&vkey=news\\_cin&fext=.jsp&c\\_id=cin](http://cincinnati.reds.mlb.com/news/article.jsp?ymd=20090809&content_id=6335258&vkey=news_cin&fext=.jsp&c_id=cin).

110. *Arbitration Figures*, BIZOFBASEBALL.COM, Feb. 20, 2008, [http://www.bizofbaseball.com/index.php?option=com\\_content&view=article&id=599&Itemid=72](http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=599&Itemid=72).

111. *Id.*

112. *Id.*

113. *Id.*

114. Camp's 2007 base salary with the Tampa Bay Devil Rays was \$411,700. *Shawn Camp #57 RP*, ESPN.COM, <http://sports.espn.go.com/mlb/players/profile?playerId=5930> (last visited Oct. 27, 2009). Camp was granted free agency on October 31, 2007, when he refused to accept an assignment to Durham. *Shawn Camp*, SBATION.COM, [http://www.sbnation.com/mlb/players/335/Shawn\\_Camp](http://www.sbnation.com/mlb/players/335/Shawn_Camp) (last visited Nov. 10, 2009). Camp was signed to a free agent minor league contract by the Toronto on January 7, 2008. *Id.* His contract was purchased on April 18, 2008, from Syracuse. *Blue Jays Report*, TORONTO STAR, Apr. 19, 2008, at S9; David Singh, *Jays Restocking 'Pen vs. Tigers*, MLB.com, [http://toronto.bluejays.mlb.com/news/article.jsp?ymd=20080419&content\\_id=2552089&vkey=news\\_tor&fext=.jsp&c\\_id=tor](http://toronto.bluejays.mlb.com/news/article.jsp?ymd=20080419&content_id=2552089&vkey=news_tor&fext=.jsp&c_id=tor) (last visited Aug. 29, 2009). Camp pitched in seven games in 2008 for Syracuse. *57, Shawn Camp, RP*, CBSSPORTS.COM, <http://www.cbssports.com/mlb/players/playerpage/132641> (last visited Nov. 10, 2009). His first appearance for Toronto was on April 20 in game 19 for the Blue Jays. *Shawn Camp #57 RP*, *supra* note 114. Camp entered 2009 with 3 years and 170 days of major league service. *See id.*

(\$450,000),<sup>115</sup> Andre Ethier (\$424,500),<sup>116</sup> Jeff Francoeur (\$460,000),<sup>117</sup> Corey Hart (\$444,000),<sup>118</sup> Shawn Hill (\$402,000),<sup>119</sup> Conor Jackson (\$419,500),<sup>120</sup> Mike Jacobs (\$395,000),<sup>121</sup> Kelly Johnson (\$430,000),<sup>122</sup> Ryan Ludwick (\$421,000),<sup>123</sup> Paul Maholm (\$424,500),<sup>124</sup> John Maine (\$450,000), Nick Markakis (\$455,000), Nate McLouth (\$425,500),<sup>125</sup> Dioner Navarro (\$432,500),<sup>126</sup> Scott Olsen (\$405,000),<sup>127</sup> Wandy Rodriguez (\$451,000),<sup>128</sup> Ervin Santana (\$445,000),<sup>129</sup> Dan Uggla (\$417,000),<sup>130</sup> Josh Willingham (\$405,000),<sup>131</sup> and Ryan Zimmerman (\$465,000).<sup>132</sup> With the exception of Shawn Hill, who went to a hearing with the Washington Nationals (Nationals)

115. *Arbitration Figures*, *supra* note 110.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. Ludwick's 2008 base salary was \$411,000. *Id.* Ludwick earned an incentive bonus of \$10,000 for making the All-Star team. See *All-Star Bonuses*, ESPN.COM, July 8, 2008, <http://sports.espn.go.com/espn/wire?section=mlb&id=3478944>. Ludwick played left field in the game after replacing starter Ryan Braun. Ludwick had three plate appearances—strikeout, walk, and infield pop up. *National League All-Stars vs. American League All-Stars – Box Score*, ESPN.COM, July 15, 2008, <http://sports.espn.go.com/mlb/boxscore?gameId=280715131&teams=national-all-stars-vs-american-all-stars>.

124. *Arbitration Figures*, *supra* note 110.

125. *Id.*

126. Navarro's 2008 base salary was listed as \$412,500. *Dioner Navarro Versus the Rays...Arbitration 2009*, MLB Blogs.com, [http://raysrenegade.mlbblogs.com/archives/2009/01/dioner\\_navarro\\_versus\\_the\\_rays.html](http://raysrenegade.mlbblogs.com/archives/2009/01/dioner_navarro_versus_the_rays.html) (last visited Oct. 27, 2009). Marc Topkin lists Navarro's salary as between \$400,000 and \$415,000. Marc Topkin, *Navarro Faces Another Emergency With Family*, ST. PETERSBURG TIMES, Feb. 16, 2008, at 6C. Navarro earned an incentive bonus of \$10,000 for making the All-Star team bringing his salary to \$422,500. See *All-Star Bonuses*, *supra* note 83. However, Maury Brown's Bizofbaseball.com site lists Navarro's 2008 salary as \$432,500. *Arbitration Figures*, *supra* note 110. That figure also appears in a number of articles about Navarro's arbitration hearing. See Jeff Zrebiec, *Orioles Close Deal With Wigginton; After Delay Following His Physical, Infielder Signs For Two Years, \$6 Million*, BALTIMORE SUN, Feb. 11, 2009, 4D; *Judges Hold Fate of List of 104; Names of Those Testing Positive in '03 Are Subject of Court Fight*, HOUSTON CHRONICLE, Feb. 11, 2009, at Sports, at 7; *Avery Getting Chance To Revive Career With Rangers' AHL Affiliate*, NORFOLK VIRGINIAN-PILOT, Feb. 11, 2009, at C3.

127. *Arbitration Figures*, *supra* note 110.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

and was released before the season began, and Shawn Camp, this group of twenty-four players was able to negotiate lucrative contracts that were much closer to true market value because of the leverage provided by access to salary arbitration.<sup>133</sup>

Prince Fielder was drafted as the seventh pick in the first round of the 2002 draft by the Brewers, and he eventually agreed to a signing bonus of \$2.4 million.<sup>134</sup> Fielder split the 2002 season between Ogden in the Pioneer League (Rookie) and Beloit in the Midwest League (Low A).<sup>135</sup> At Ogden, Fielder played in 41 games and hit 10 home runs, knocked in 40 runs, and hit .390.<sup>136</sup> After his promotion to Beloit, Fielder's average in 32 games dropped to .241, and he hit only three home runs.<sup>137</sup> However, in 2003, Fielder returned to Beloit and hit .313 with 27 home runs and 112 RBIs.<sup>138</sup> That effort earned him a promotion to AA Huntsville in the Southern League.<sup>139</sup> Fielder's average for the 2004 season was .272, but he banged out 23 home runs and drove in 78.<sup>140</sup> Fielder was promoted again in 2005 to AAA Nashville in the Pacific Coast League.<sup>141</sup> Fielder split time between Nashville and the major leagues in 2005.<sup>142</sup> He hit 28 home runs with a .291 batting average and 86 RBIs in the minors<sup>143</sup> while hitting .288 with 2 home runs and 10 RBIs in 62 plate appearances in 39 games for the Brewers.<sup>144</sup> As a high draft choice with a substantial signing bonus, the total compensation for Fielder's minor league career greatly exceeded that of many of his teammates who received modest compensation for their years of chasing the dream to get

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133. *Id.*

134. Fielder played his senior season of high school baseball at Eau Gallie High School, in Melbourne, Florida, after spending his first three seasons at Florida Air Academy. Fred Girard, *Fielder Vows to Repay Debt*, USA TODAY, Oct. 22, 2004, available at [http://www.usatoday.com/sports/baseball/2004-10-22-fielder\\_x.htm](http://www.usatoday.com/sports/baseball/2004-10-22-fielder_x.htm) (last visited Sept. 1, 2009). After his father, former major league star Cecil Fielder, took \$200,000 of his signing bonus, the relationship between the two deteriorated to the point that Prince stated that his father was "dead to me." *Id.*

135. *Prince Fielder Minor League Statistics & History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/minors/player.cgi?id=field001pri> (last visited Oct. 19, 2009).

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Prince Fielder Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/f/fieldpr01.shtml> (last visited Oct. 19, 2009) [hereinafter *Prince Fielder Statistics*].

to the major leagues and stay long enough to move into the group of arbitration-eligible players that enjoy a tremendous increase in their earnings.

In 2006, Fielder played the entire season in the major leagues where he hit .271 with 28 home runs and 81 RBIs.<sup>145</sup> Fielder was paid \$329,500 for his efforts in 2006.<sup>146</sup> In 2007, the Brewers signed Fielder for a modest increase to \$415,000.<sup>147</sup> Fielder led the National League with 50 home runs while batting .288 with 119 RBIs.<sup>148</sup> He posted an OPS of 1.013<sup>149</sup> while finishing third in the voting for Most Valuable Player and being named to the All-Star Team for the first time.<sup>150</sup> Despite Fielder's two complete seasons in the major leagues his credited service time for the partial 2005 season did not place him in the Super Twos category prior to the 2008 season. Had he been able to get into the arbitration group in 2008, his statistics and market value would have triggered a substantial salary increase and perhaps a multi-year contract. Instead, for Fielder's two outstanding seasons, he was signed for an increase to \$670,000.<sup>151</sup> The slugger was disappointed with the outcome and stated, "[t]he fact that I've had to be renewed two years in a row, I'm not happy about it because there's a lot of guys who have the same amount of time that I do who have done a lot less and are getting paid a lot more."<sup>152</sup> Fielder's "renewed" deals, however, track the nature of the salary structure created over the past thirty-five years in negotiations between the Players Association and the owners. During the same off-season, Ryan Howard went to arbitration with the Phillies and won his case and his figure of ten million.<sup>153</sup>

Fielder's figures for 2008 did "drop" to 34 home runs, 102 RBIs, a .276

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145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* OPS is the sum of on-base percentage and slugging percentage. Fielder's on-base percentage in 2007 was .395 while his slugging percentage was .618. *Id.* Philadelphia Phillies shortstop Jimmy Rollins won the National League Most Valuable Player Award and outfielder Matt Holliday of the Colorado Rockies finished second.

151. *Id.*

152. *Baseball Notes: Contract Renewal Also Angers Prince Fielder*, PHIL. INQUIRER, Mar. 3, 2008, at E3; *Brewers' Fielder Irked Not to Get Bigger Deal*, ST. PAUL PIONEER PRESS, Mar. 3, 2008, at C4.

153. The Phillies had offered Howard seven million dollars, but arbitrators Robert Bailey, Jack Clarke, and Stephen Goldberg agreed with Howard's request for ten million dollars. Todd Zolecki, *Phillies' Ryan Howard Wins Arbitration Hearing*, PHILADELPHIA INQUIRER, Feb. 22, 2008, at D-1. Howard had been paid \$355,000 in 2005 and 2006, and he earned \$900,000 in 2007. David Murphy, *Phillies-Phillies' Howard Taking Arbitration Hearing in Stride*, PHIL. DAILY NEWS, Feb. 20, 2008, at 92.

batting average, and a .879 OPS.<sup>154</sup> With the leverage of salary arbitration finally available prior to the 2009 season, Fielder signed a two-year deal on January 23 for \$18 million.<sup>155</sup> The deal included \$6.5 million for the 2009 season, a \$1 million signing bonus, and \$10.5 million for 2010.<sup>156</sup> He is also eligible for a \$500,000 bonus for 500 plate appearances and \$25,000 for selection to the All-Star Game.<sup>157</sup> Fielder picked up the All-Star Game money and won the Home Run Derby competition prior to the All-Star Game in St. Louis.<sup>158</sup>

Albert Pujols was drafted by the Cardinals in the 13th round of the 1999 draft.<sup>159</sup> Pujols spent the 1999 season playing in the Jayhawk League after turning down a \$10,000 offer.<sup>160</sup> He subsequently signed for a \$60,000 bonus, far less than Fielder was able to garner from the Brewers for his high draft position.<sup>161</sup> Pujols played for three different Cardinals's farm clubs in 2000, but he spent the majority of time in Peoria of the Midwest League.<sup>162</sup> He hit .324 with 17 home runs and 84 RBIs.<sup>163</sup> He also played twenty-one games for Potomac in the Carolina League (High-A) and three games for Memphis in the Pacific Coast League.<sup>164</sup>

After only one season in the minors, the twenty-one-year-old Pujols turned

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154. *Prince Fielder Statistics*, *supra* note 138.

155. When the two sides exchanged figures, the Brewers offered \$6 million while Fielder's agent Scott Boras asked for \$8 million. Tom Haudricourt, *Mutual Accord: Fielder, Brewers Agree on a Two-year Deal*, MILWAUKEE J. SENTINEL, Jan. 23, 2009, at C1. Fielder had turned down a five-year deal for \$60 million early in the 2008 season. *Id.*

156. *Brewers, Fielder Finalize Deal*, GRAND RAPIDS PRESS, Jan. 24, 2009, at D6.

157. Fielder's teammates Ryan Braun and Trevor Howard both received \$50,000 bonus for making the All-Star Team. *Brewers: Prince's All-Star Bonus the Smallest of Trio*, MADISON CAP. TIMES, July 15, 2009. See Anthony Witrado, *Prince's First-Base Scenario: Fielder's Statistics Point to Second All-Star Selection*, MILWAUKEE J. SENTINEL, July 5, 2009. This article discusses Fielder's statistical claim for selection to the team.

158. Dave Van Dyke, *Prince of Pop – Brewers Slugger Claims the Crown to Dismay of Pujols Fans*, CHI. TRIB., July 14, 2009, at 3; Paul Hoynes, *Prince Becomes a King; Milwaukee's Fielder Outslugs Texas' Cruz*, CLEVE. PLAIN DEALER, July 14, 2009, at D5.

159. Bob Luder, *Cards Draft Fort Osage Player*, K.C. STAR, July 15, 1999, at 16. Pujols was the 402nd choice in the 1999 draft out of Maple Woods Community College. Amateur Draft: 13th Round of the 1999 June Draft, BASEBALL-REFERENCE.COM, [http://www.baseballreference.com/draft/?query\\_type=year\\_round&year\\_ID=1999&draft\\_round=13](http://www.baseballreference.com/draft/?query_type=year_round&year_ID=1999&draft_round=13) (last visited Oct. 19, 2009).

160. Randy Covitz, *Scout of Honor: Dave Karaff, Who Signed Albert Pujols, Was Ultimately Let Go By the Cardinals*, PITT. POST-GAZETTE, May 28, 2006, at D-5.

161. *Id.*

162. *Albert Pujols Minor League Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/minors/player.cgi?id=pujols001jos> (last visited Sept. 23, 2009).

163. *Id.*

164. *Id.*

in a tremendous season in 2001 with a .329 average, 37 home runs and 130 RBIs in 161 games played.<sup>165</sup> Pujols also posted a 1.013 OPS.<sup>166</sup> For this effort, Pujols received \$200,000, the league minimum.<sup>167</sup> The Cardinals tripled Pujols' salary for 2002 to \$600,000.<sup>168</sup> In comparison to Fielder, Pujols made a stronger jump in his major league salary, but the Brewers could argue that the higher signing bonus should be considered as an off-set. After another outstanding season with a .314 batting average, 34 home runs, and 127 RBIs, Pujols received a record deal for a third-year player of \$900,000 for 2003.<sup>169</sup> Although the Cardinals could have paid Pujols much less, they rewarded their young star with excellent raises during his two years prior to arbitration eligibility.<sup>170</sup> During Pujols first year of arbitration eligibility, the two sides exchanged figures prior to the 2004 season.<sup>171</sup> The Cardinals submitted \$7 million, while Pujols countered with a request for \$10.5 million.<sup>172</sup> The Cardinals and Pujols agreed to a seven-year deal on February 19 for a total of \$100 million; thus, buying out all of his arbitration years through 2006 plus four years of free agency.<sup>173</sup> Pujols has rewarded the Cardinals with outstanding productivity in his career that certainly seems destined to produce a plaque in Cooperstown.

Tim Lincecum was drafted number ten overall in the first round of the 2006 draft by the San Francisco Giants (Giants) after a collegiate career at the University of Washington.<sup>174</sup> Lincecum received a \$2.03 million signing

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165. *Albert Pujols Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/p/pujola01.shtml> (last visited Sept. 23, 2009).

166. *Id.*

167. *Id.*

168. *Id.*

169. Pujols also earned an incentive bonus of \$50,000 for making the All Star team. *MLB Sunflashes Column*, WINNIPEG SUN, Mar. 3, 2007, at S16.

170. *Id.*

171. *Arbitration Figures*, *supra* note 110.

172. *Id.*

173. Patrick Reusse, *How Far He's Come; Albert Pujols Was Barely a Pro When He Showed Up At the Cardinals Spring Training Camp in 2001; Now He's Averaging 40 Home Runs and 126 RBI Per Year*, MINN. STAR TRIB., Oct. 26, 2004, Sports, at 1C.

174. *Huskies Ace Falls Into Giants' Lap at No. 10; Smallish Stature Might Be Reason Lincecum Drops Out of the Top Five*, CONTRA COSTA TIMES, June 7, 2006. *See also*, Rick Herrin, *Cats Pitcher Gets Royal Treatment*, FORT WORTH STAR-TELEGRAM, June 7, 2006, at D6 (listing Lincecum as a number one candidate). Lincecum had been drafted in the 2005 draft in the 42nd round by the Cleveland Indians. The pitcher opted to return to college, and the decision turned out to be a correct one when he won the Golden Spikes Award. John McGrath, *Lincecum's Got All the Right Stuff*, TACOMA NEWS TRIB., May 14, 2006 at C1; John Shea, *Giants Think They Got Real Deal: S.F. Selects Washington's Lincecum; Oakland Grabs Prep Pitcher*, S.F. CHRON., June 7, 2006, at D3; *Ex-UW Pitcher Lincecum Is National Player of Year*, VANCOUVER COLUMBIAN, June 24, 2006, at B5;

bonus when he reached an agreement with the Giants on June 6.<sup>175</sup> He split his 2006 season between San Jose in the California League (High-A) and Salem-Keizer in the Northwest League (Rookie). In a total of eight starts, Lincecum struck out fifty-eight in thirty-one and two-thirds innings and surrendered only fourteen hits and six earned runs for a 1.71 ERA.<sup>176</sup> In 2007, Lincecum was promoted to AAA Fresno in the Pacific Coast League, where he won four games in five starts when he gave up only one run in thirty-one innings while striking out forty-six.<sup>177</sup> He earned a trip to the majors and debuted on May 6 against the Phillies.<sup>178</sup> Although he was overmatched against the Phillies hitters giving up home runs to Shane Victorino and Ryan Howard, he completed the season with a 7-5 record, a 4.00 ERA and 150 strikeouts in 146 1/3 innings.<sup>179</sup> For the 2008 season, Lincecum received a contract for \$405,000, slightly higher than the league minimum of \$390,000.<sup>180</sup> He turned in an outstanding season with an 18-5 record in thirty-three starts with a 2.62 ERA, a league-leading 265 strikeouts and only 182 hits in 227 innings.<sup>181</sup> He was a member of the National League All-Star Team and won the Cy Young Award.<sup>182</sup> The Giants did sign Lincecum for \$650,000 for the 2009 season.<sup>183</sup> With 148 days of credited major league service during his 2007 season, he stands to make a substantial increase in his salary if he lands in the Super Twos group prior to the 2010 season.<sup>184</sup>

The Rays took a quite different approach with young star Evan Longoria. After taking Longoria with the third overall pick in the 2006 draft, seven choices ahead of Tim Lincecum, Longoria and the Rays agreed to a \$3 million

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*Sports Briefing*, N.Y. TIMES, June 24, 2006, at D6.

175. See John Shea, *Big Kid, Big Hopes: 16-Year-Old Holds 40-40 Promise, But Giants Are Preaching Patience*, S.F. CHRON., Sept. 26, 2006, at C-1; John Shea, *High Picks Bring High Stakes - Giants, A's Draft in Top 12*, S.F. CHRON., June 5, 2008, at D-3.

176. *Tim Lincecum Minor League Statistics & History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/minors/player.cgi?id=lincec001tim> (last visited Oct. 19, 2009).

177. *Id.*

178. Janie McCauley, *MLB: Lincecum Rocked in Debut For Giants*, SEATTLE TIMES, May 7, 2007, [http://seattletimes.nwsources.com/html/sports/2003696484\\_lincecum07.html](http://seattletimes.nwsources.com/html/sports/2003696484_lincecum07.html).

179. Todd Zelicki, *Phillies Turn On Power: Shane Victorino and Ryan Howard Homered in the 8-5 Win Over the Giants; Hamels Fanned Nine*, PHIL. INQUIRER, May 7, 2007, at F1.

180. *Tim Lincecum Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/l/linceti01.shtml> (last visited Oct. 19, 2009).

181. *Id.*

182. *Id.*

183. Henry Schulman, *Update: Lincecum Signs \$650,000 Contract*, SFGATE.COM, Feb. 26, 2009, [http://www.sfgate.com/cgi-bin/blogs/giants/detail?blogid=22&entry\\_id=36288](http://www.sfgate.com/cgi-bin/blogs/giants/detail?blogid=22&entry_id=36288).

184. *Id.*

signing bonus.<sup>185</sup> The Rays spread Longoria's 2006 season over Hudson Valley in the New York-Penn League (Short-Season A), Visalia in the California League, and Montgomery in the Southern League (AA). In a total of 62 games, Longoria hit .315 with 18 home runs, 58 RBIs, and a .957 OPS.<sup>186</sup> In 2007, Longoria split time between Montgomery in the Southern League and Durham in the International League (AAA). In a total of 136 games, Longoria hit .299 with 26 home runs and 95 RBIs and a .921 OPS.<sup>187</sup> Longoria's major league debut was on April 12, 2008, in the Rays's eleventh game of the season against the Baltimore Orioles (Orioles).<sup>188</sup>

In a novel approach for a small-market team that would shock MLB by representing the American League in the 2008 World Series, the Rays decided that instead of playing an annual game of determining Longoria's salary, they signed him to a six-year deal worth a minimum of \$17.5 million and a maximum of \$44 million in April 2008.<sup>189</sup> Longoria received a modest salary of \$500,000 for 2008, \$550,000 in 2009, and \$950,000 in 2010.<sup>190</sup> In 2011, Longoria will jump to \$2 million with staggered increases in 2012 to \$4.5 million and to \$6 million in 2013.<sup>191</sup> The Rays also have a club option at \$7.5 million for 2014 with Longoria holding a \$3 million buyout.<sup>192</sup> The Rays also negotiated club options for 2015 and 2016 at \$11 million in the first year and \$11.5 million in the latter year.<sup>193</sup> If Longoria is arbitration-eligible after 2010, he will receive a \$500,000 increase in his 2011 salary to \$2.5 million.<sup>194</sup> Arbitration eligibility after 2011 will bump the buyout for the 2014 option to \$4 million.<sup>195</sup> The Rays, thus, purchased all of Longoria's arbitration-eligible

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185. Carter Gaddis, *Longoria Just Who Rays Wanted*, TAMPA TRIB., June 7, 2006, at 1. Longoria played his college ball at Long Beach State. *Id.*

186. *Evan Longoria Minor League Statistics & History*, BASEBALL-REFERENCE.COM <http://www.baseball-reference.com/minors/player.cgi?id=longor001eva> (last visited Oct. 19, 2009).

187. *Id.*

188. Longoria recorded his first hit and RBI against the Orioles in a 3-2 Rays loss. *Evan Longoria 2008 Batting Gamelogs*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/gl.cgi?nl=longoev01&t=b&year=2008>.

189. Joe Henderson, *Longoria's Long-Term Deal A Gamble, But It's Worth It*, TAMPA TRIB., April 19, 2008, at 1.

190. *Cot's Baseball Contracts: Tampa Bay Rays*, COT'S BASEBALL CONTRACTS, [http://mlbcontracts.blogspot.com/2005/01/tampa-bay-devil-rays\\_112131227267025321.html](http://mlbcontracts.blogspot.com/2005/01/tampa-bay-devil-rays_112131227267025321.html) (last visited Oct. 19, 2009).

191. *Id.*

192. *Id.*

193. *Id.* The Rays must decide by November 2014 whether to exercise the options for 2015 and 2016. The 2016 options may increase to \$44 million based on rankings in MVP award vote.

194. *Id.*

195. *Id.*



seasons plus they put themselves in command of his early free agent seasons at figures that related well to the Fielder, Pujols, and other star emerging into their salary arbitration years at 2008 market values. After finishing the 2008 season with a .272 batting average, 31 doubles, 27 home runs, and 85 RBIs, Longoria was selected as Rookie of the Year in the American League.<sup>196</sup> Longoria also has a bonus clause worth \$50,000 for selection to the All-Star Team, and he made the American League squad in both 2008 and 2009.<sup>197</sup> Longoria was able to secure a long-term deal at a very early stage of service time while the Rays were able to establish cost certainty for their young star.

#### VI. DAVID PRICE, FRANCISCO LIRIANO, AND THE SAGA OF THE SUPER TWOS

On May 30, 2009, in the second game of a three-game series between the Twins and the Rays, Francisco Liriano, and David Price started on the mound for their respective teams.<sup>198</sup> Price picked up his first career regular season win in the game after throwing 108 pitches in five and two-thirds innings.<sup>199</sup> Price was pitching with a pitch count, and just surpassed the required five innings needed to receive credit for the win.<sup>200</sup> Liriano, however, dropped to 2-7 while his ERA increased to 6.60 in the 5-2 victory for the Rays.<sup>201</sup> Early in the season a number of reporters and bloggers were surprised that David Price, the number one draft choice in 2007 from Vanderbilt, was being sent down to Durham for more minor league work after his successful end-of-the-year playoff effort in 2008.<sup>202</sup> Jayson Stark of ESPN was one who offered some observations in one of his online columns.<sup>203</sup> Although his spring training performance included a 1.08 ERA, Stark reviewed the Ray's reasoning and argued that the move was not done for financial reasons because the terms of Price's initial six-year deal protected the Rays.<sup>204</sup> However, when looking closer at the terms of Price's \$8.5 million contract that could increase to \$11.25 million, it appears that the pitcher has the right to void the annual salary in the original deal and file for arbitration in any year where he

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196. Joe Henderson, *Evan Longoria Rookie of the Year*, TAMPA TRIB., Nov. 11, 2008, at 1.

197. *Cot's Baseball Contracts: Tampa Bay Rays*, *supra* note 184.

198. Tony Fabrizio, *Delivering the Goods*, TAMPA TRIB., May 31, 2009, at 1.

199. *Id.*

200. *Id.*

201. *Id.*

202. Jayson Stark, *Believe It or Not, Price Headed to the Minors*, ESPN.COM, Mar. 24, 2009, [http://sports.espn.go.com/mlb/spring2009/columns/story?columnist=stark\\_jayson&id=4011780](http://sports.espn.go.com/mlb/spring2009/columns/story?columnist=stark_jayson&id=4011780).

203. *Id.*

204. *Id.*

reaches arbitration-eligibility.<sup>205</sup> By spending the early part of the 2009 season in the minors, Price will not complete the 2009 season with more than one year of credited service based on his limited time on the Rays roster in 2008.<sup>206</sup> Price was recalled by the Rays on May 25, 2009, from AAA Durham.<sup>207</sup> For the Bulls, Price started in eight games winning one and losing four.<sup>208</sup> Price was first promoted by the Rays from the Durham Bulls on September 13, 2008.<sup>209</sup> His first major league appearance was on September 14 in game 147 for the Rays.<sup>210</sup> Price pitched in five post-season games, and his first decision, a win, came against the Red Sox in game two of the American League Championship Series on October 11, 2008.<sup>211</sup> Even if Price spends the entire 2010 season on the Rays's roster, he will not land in the Super Twos group prior to the 2011 season.<sup>212</sup>

An interesting case involving a similar question arose in 2008 when the Twins did not recall Francisco Liriano from Rochester until August 1.<sup>213</sup> Liriano started nineteen games for Rochester in 2008 with a 10-2 record and a 3.28 ERA in 118 innings.<sup>214</sup> Liriano was originally signed as a free agent

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205. Price signed with the Rays on August 15, 2007, for \$8,500,000. *Cot's Baseball Contracts*, *supra* note 184. He received a signing bonus of \$5,600,000 paid in six installments each year on August 31 from 2007 through 2012. *Id.* The Rays set his salary if Price is in the major leagues at \$500,000 for 2007; \$650,000 for 2008; \$750,000 for 2009; \$1 million for 2010; \$1.25 for 2011, and \$1.5 million for 2012. *Id.* If Price is in the minor leagues he would make \$100,000 in 2008; \$150,000 in 2009; \$200,000 in 2010; \$650,000 in 2011; and \$1.2 million in 2012. Price holds the right void his salaries and file for arbitration whenever he becomes eligible. *Id.*

206. *Id.* Price had only thirty-one days of credited service entering the 2009 season. *Id.*

207. Price started that evening at Cleveland and pitched 3 1/3 innings, giving up four hits, two earned runs, while walking five and striking out six. Joe Smith, *Rays Reach Peak of Embarrassment*, ST. PETERSBURG TIMES, May 26, 2009, at 1C. Price threw precisely 100 pitches—57 strikes. *David Price 2009 Pitching Gamelogs*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/gl.cgi?nl=priceda01&t=p&year=2009> (last visited Oct. 19, 2009).

208. In thirty-four innings, Price was charged with giving up fifteen earned runs, twenty runs total. *David Price Minor League Statistics & History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/minors/player.cgi?id=price-004dav> (last visited Oct. 19, 2009). He walked eighteen and struck out thirty-four. *Id.*

209. *Id.*

210. *Id.*

211. Dennis Maffezzoli, *Win in Marathon Game Validates Rays*, SARASOTA HERALD-TRIB., Oct. 13, 2008, at C3; Mark Topkin & Joe Smith, *Maddon Says Setting Won't Cow Rays*, ST. PETERSBURG TIMES, Oct. 13, 2008, at 4C.

212. Ed Edmonds, *David Price, Francisco Liriano, and the Saga of the Super Twos*, SPORTS LAW BLOG, June 1, 2009, <http://sports-law.blogspot.com/2009/06/david-price-francisco-liriano-and-saga.html>

213. *Twins Recall Pitcher Francisco Liriano*, MINN. STAR TRIB., Aug. 1, 2009, available at [http://www.accessmylibrary.com/coms2/summary\\_0286-34904814\\_ITM](http://www.accessmylibrary.com/coms2/summary_0286-34904814_ITM).

214. Liriano also had a solid strikeout-to-walk ratio. *Francisco Liriano Minor League Statistics & History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/minors/player.cgi?id=>

from San Cristobal, Dominican Republic, by the Giants in 2000.<sup>215</sup> After three seasons in the minor leagues, he was traded with Boof Bonser and Joe Nathan to the Twins on November 14, 2003, for A. J. Pierzynski.<sup>216</sup> Pierzynski would have been eligible for salary arbitration before the 2004 season, and he was looking to increase his \$365,000 annual salary to \$3 million.<sup>217</sup> Liriano was a late-season addition to the 2005 Twins's roster, and he pitched in six games including his debut on September 5 against the Rangers.<sup>218</sup> Liriano had an outstanding 2006 season with a 12-3 record and a 2.16 ERA in 121 innings pitched while allowing only 89 hits and striking out 144.<sup>219</sup> However, Liriano injured his elbow, and underwent "Tommy John" surgery in Los Angeles on November 6, 2006.<sup>220</sup> Liriano missed the entire 2007 season.<sup>221</sup> After losing his first three starts in Minnesota between April 13 and April 24, 2008, Liriano was optioned to Rochester, the Twins's AAA farm team in the International League.<sup>222</sup> Liriano's 2008 salary while in the major leagues was a prorated portion of an annual \$410,000 deal.<sup>223</sup>

Liriano's salary for 2009 is \$430,000, a modest amount above the league minimum of \$400,000 in part because his service time at the beginning of the season was not quite enough to land in the group of Super Twos.<sup>224</sup> Liriano is

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lirian001fra (last visited Oct. 19, 2009). Low walk totals are a hallmark of the Twins pitching philosophy. It appeared that he could have been recalled earlier last season. *Id.*

215. *Id.*

216. La Velle E. Neal III, *Twins Make Catcher Commitment: Pierzynski Out, Mauer In: Team Bolsters Mound Depth, Saves Payout in Arbitration*, MINN. STAR TRIB., Nov. 15, 2003, at 1C.

217. *Id.* Pierzynski actually worked out a deal with San Francisco for \$3.5 million. *Cot's Baseball Contracts: Chicago White Sox*, COT'S BASEBALL CONTRACTS, <http://mlbcontracts.blogspot.com/2005/01/chicago-white-sox.html> (last visited Oct. 19, 2009). However, he would be non-tendered after one season with the Giants. *Id.* He subsequently negotiated a free agent deal with the Chicago White Sox for \$2.25 million for 2005. *Id.* He was able to convince the White Sox to give him a three-year, \$15 million deal covering 2006-2008. *Id.*

218. *Francisco Liriano Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/l/liriafr01.shtml> (last visited Oct. 19, 2009) [hereinafter *Francisco Liriano Statistics*].

219. *Id.*

220. Dr. Lewis Yocum, the team physician for the Los Angeles Angels and Dr. John Steubs, the Minnesota Twins team physician, performed the surgery on Liriano. La Velle E. Neal III, *Liriano's '07 Season Over After Surgery Goes Well*, MINN. STAR-TRIB., Nov. 7, 2006, at 1C.

221. *Id.*

222. Liriano did not start the season with the Twins because he was optioned to Fort Myers on March 28. *See Francisco Liriano Statistics*, *supra* note 212. Liriano made one start for Fort Myers where he gave up four runs in 5 1/3 innings although he did record eight strikeouts. *Id.* He was optioned back to Rochester on April 25. *Id.*

223. *Id.*

224. *Cot's Baseball Contracts: Minnesota Twins*, COT'S BASEBALL CONTRACTS, [http://mlbcontracts.blogspot.com/2005/01/minnesota-twins\\_17.html](http://mlbcontracts.blogspot.com/2005/01/minnesota-twins_17.html) (last visited Oct. 19, 2009).

struggling to regain his 2006 form, but the cost of his services to the Twins is quite low. Liriano's service time at the beginning of the 2009 season was two years and 104 days.<sup>225</sup>

By way of an example, Brian Bannister of the Kansas City Royals (Royals) had service time of two years and 158 days, and he was in the 2009 Super Twos group.<sup>226</sup> Bannister made \$421,000 in 2008, but he signed on February 4, 2009, for the midpoint figure of \$1.74 million after exchanging numbers with the Royals.<sup>227</sup> Bannister was on the Royals roster all of 2008, but he started the 2009 season in Omaha after he was optioned to the AAA team on April 1.<sup>228</sup> After spending three weeks in Omaha and starting three games, Bannister was recalled on April 21. Bannister's first start was against the Indians on April 22, 2009.<sup>229</sup>

Ricky Nolasco, the Marlins starter, had a service time number of two years and 142 days.<sup>230</sup> His 2008 salary was \$390,000, and he negotiated a salary of \$2.4 million for the 2009 season.<sup>231</sup> Nolasco did not spend any time in 2008 in the minor leagues.<sup>232</sup> When Nolasco started the 2009 season poorly, the Marlins optioned him to the New Orleans Zephyrs (AAA) on May 23 where he started two games before being recalled. He did not reappear on the mound for Florida until June 7 against the Giants.<sup>233</sup>

The star of the 2009 pitching class of Super Twos was Cole Hamels of the World Champion Phillies. Hamels's service time was two years and 143

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225. *Id.*

226. Edmonds, *supra* note 206.

227. *Brian Bannister Transactions*, BASEBALLREFERENCE.COM, <http://www.baseball-reference.com/players/b/bannibr01.shtml> (last visited Oct. 26, 2009). Bannister's submitted figure was \$2.03 million, and the Royals countered with \$1.45 million. *Arbitration Figures*, BIZOFBASEBALL.COM, [http://www.bizofbaseball.com/index.php?option=com\\_content&view=article&id=599&Itemid=72](http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=599&Itemid=72) (last visited Oct. 26, 2009). Bannister also can earn performance bonuses of \$25,000 by pitching 200 innings and for making the All-Star team. *Id.*

228. *Royals Recall Bannister from Triple-A Omaha After Putting Waechter on 15-Day Disabled List*, BREAKING NEWS 24/7.COM, Apr. 21, 2009, <http://blog.taragana.com/n/royals-recall-bannister-from-triple-a-omaha-after-putting-waechter-on-15-day-disabled-list-32425/>.

229. Bannister left the game after six innings without surrendering a run and holding a 1-0 lead. *Brian Bannister Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/gl.cgi?n1=bannibr01&t=p&year=2009> (last visited Oct. 19, 2009). The Royals won the game 2-0. *Id.*

230. *Ricky Nolasco Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/n/nolasri01.shtml> (last visited Oct. 19, 2009) [hereinafter *Ricky Nolasco Statistics*].

231. *Cot's Baseball Contracts: Florida Marlins*, COT'S BASEBALL CONTRACTS, [http://mlbcontracts.blogspot.com/2005\\_01\\_19\\_mlbcontracts\\_archive.html](http://mlbcontracts.blogspot.com/2005_01_19_mlbcontracts_archive.html) (last visited Oct. 19, 2009).

232. *Ricky Nolasco Statistics*, *supra* note 224.

233. *Id.*

days.<sup>234</sup> Hamels was able to improve his 2008 salary of \$500,000 to \$4.35 million for 2009 on the basis of his 84 starts during his three years with the Phillies.<sup>235</sup> Hamels's first pitching assignment in 2006 was against Cincinnati on May 12, the Phillies's 35th game of the season.<sup>236</sup> In 2007, Hamels went on the fifteen-day disabled list with a mild left elbow strain on August 17, and he was reactivated on September 18.<sup>237</sup> Time on the disabled list still counts as part of a player's service time.<sup>238</sup>

The fourth starting pitcher in the Super Twos class of 2009 was Shawn Hill of the Washington Nationals.<sup>239</sup> Hill was one of the three players to proceed to a hearing in February 2009.<sup>240</sup> After defeating the Nationals, Hill was released by the Nationals.<sup>241</sup> He found a spot on the San Diego Padres roster, but after pitching in three games he was back to his familiar spot on the disabled list.<sup>242</sup> Hill underwent Tommy John surgery for the second time on June 24.<sup>243</sup>

## VII. THE "FILE-AND-GO" STRATEGY

In establishing an interesting strategy to deal with Evan Longoria and David Price, the Rays joined a small group of teams, including the Rays and Astros, to alter the dynamics of the arbitration process and force the player's hand with a strategy nicknamed "File-and-go."<sup>244</sup> Basically, after an

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234. *Arbitration Figures*, *supra* note 110.

235. *Cot's Baseball Contracts: Philadelphia Phillies*, COT'S BASEBALL CONTRACTS, [http://mlbcontracts.blogspot.com/2005/01/philadelphia-phillies\\_18.html](http://mlbcontracts.blogspot.com/2005/01/philadelphia-phillies_18.html) (last visited Oct. 19, 2009).

236. *Cole Hamels Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/h/hamelco01.shtml> (last visited Oct. 19, 2009).

237. *Cole Hamels's Injury History*, SPORTSILLUSTRATED.COM, <http://sportsillustrated.cnn.com/baseball/mlb/players/7509/injuries.html> (last visited Oct. 19, 2009).

238. MAJOR LEAGUE BASEBALL, BASIC AGREEMENT BETWEEN MLB AND THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION art. XXI, A(2)(a), EFFECTIVE DEC. 20, 2006.

239. *Shawn Hill Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/h/hillsh01.shtml> (last visited Oct. 19, 2009).

240. Chico Harlan, *Nationals Release Hill, Sign Beigel to One-Year \$2 Million Deal*, WASH. POST, Mar. 18, 2009, available at [http://voices.washingtonpost.com/nationalsjournal/2009/03/nats\\_release\\_hill\\_sign\\_beigel.html](http://voices.washingtonpost.com/nationalsjournal/2009/03/nats_release_hill_sign_beigel.html).

241. *Shawn Hill Player News and Statistics*, ROTOWORLD.COM, [http://www.rotoworld.com/Content/playerpages/player\\_previousnews.aspx?sport=MLB&id=3889](http://www.rotoworld.com/Content/playerpages/player_previousnews.aspx?sport=MLB&id=3889) (last visited Oct. 19, 2009).

242. Dr. James Andrews performed the surgery in Birmingham, Alabama. Corey Brock, *Hill Has Tommy John Surgery: Padres Righty Out 10-14 Months After Procedure Last Week*, MLB.COM, June 30, 2009, [http://sandiego.padres.mlb.com/news/article.jsp?ymd=20090630&content\\_id=5621330&vkey=news\\_sd&fext=.jsp&c\\_id=sd](http://sandiego.padres.mlb.com/news/article.jsp?ymd=20090630&content_id=5621330&vkey=news_sd&fext=.jsp&c_id=sd).

243. *Id.*

244. "The Marlins have a standard policy where, if they don't sign a player by the figures-

agreement to accept arbitration, the team's position is to negotiate up to the point of exchanging figures.<sup>245</sup> If the two sides cannot reach an agreement prior to the exchange, the team will no longer negotiate after numbers are filed but will instead proceed directly to the hearing.<sup>246</sup> This philosophy was used by the Astros in 2008 with Mark Loretta and Jose Valverde, in 2009 by the Rays with Dioner Navarro, and by the Marlins with Dan Uggla.<sup>247</sup>

Bill Chastain, an MLB.com reporter covering the Rays, discussed the Rays's philosophy in an article discussing the team's 2009 negotiations with Willy Aybar and Dioner Navarro.<sup>248</sup> The team set a deadline of noon on Tuesday, January 20, to complete negotiations or settle for a hearing.<sup>249</sup> Chastain interviewed Gerry Hunsicker, Senior Vice President, Baseball Operations, about the Rays' philosophy:

I can speak for the club's perspective: we were both hoping that we could avoid having to file numbers . . . . But at the end of the day, we were not successful. So as the players and the agents are aware, we do have a file-and-go strategy . . . . Typically you don't get a deal done until the 11th hour, so by implementing this strategy, we've essentially tried to move the 11th hour up to now . . . . As opposed to a month from now or three weeks from now when a hearing takes place . . . . That is our policy and it's not something that we've used in a threatening way . . . . We've been open and forthright with the players and their representatives. The players fully understand that from the beginning of the process. They understand what our policy is. And in these cases and in future cases, as long as we have this as our policy, we will not

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exchanging date, they will resolve the matter at the hearing . . . ." Alden Gonzalez, *Uggla, Nolasco File For Salary Arbitration; Teammates Cantu, Amezaga, Hermida and Ross Also File*, MLB.COM, Jan. 15, 2009; Brian McTaggart, *Astros Intend to Go to Arbitration: Loretta, Valverde Fail to Reach Deals Before Deadline*, HOUS. CHRON., Jan. 24, 2008, at A13.

245. Ed Edmonds, *The Tampa Bay Rays and the "File-and-Go Strategy"*, SPORTS LAW BLOG, Jan. 23, 2009, <http://sports-law.blogspot.com/2009/01/tampa-bay-rays-and-file-and-go-strategy.html>.

246. *Id.*

247. Joe Capozzi, *Dan Uggla, Headed for Arbitration, Says He is Not Upset with Marlins*, PALMBEACHPOST.COM, Feb. 4, 2009, <http://www.palmbeachpost.com/marlins/content/sports/epaper/2009/02/04/0204marlins.html>.

248. Bill Chastain, *Aybar, Navarro Will Go To Arbitration; Pair of Players Unable To Come To Terms With Rays Before Deadline*, MLB.COM, Jan. 20, 2009, [http://mlb.mlb.com/news/article.jsp?ymd=20090120&content\\_id=3751465&vkey=hotstove2008&fext=.jsp](http://mlb.mlb.com/news/article.jsp?ymd=20090120&content_id=3751465&vkey=hotstove2008&fext=.jsp).

249. *Id.*

enter into any additional dialogue after we file numbers.<sup>250</sup>

The Rays adopted this concept under the leadership of Andrew Friedman, the Executive Vice President of Baseball Operations since 2006.<sup>251</sup> The Rays first hearing as a franchise was in 2002 with Esteban Yan.<sup>252</sup> Yan was seeking an increase from \$743,000 to \$2.4 million, and the Rays felt that \$1.5 million was the appropriate figure.<sup>253</sup> The arbitration panel of Dan Brent, Roger Kaplan, and Carol Whittenberg agreed with the team.<sup>254</sup> Backup catcher Josh Paul endured hearings twice against the Rays in 2006 and 2007.<sup>255</sup> In December 2005, the Rays traded minor leaguer Travis Schlichting to the Angels for Paul.<sup>256</sup> Paul was paid \$450,000 by the Angels in 2005, and he requested \$750,000 from the Rays.<sup>257</sup> The Rays felt that Paul's abilities merited just a modest increase to \$475,000, and the arbitration panel of Dan Brent, Margaret Brogan, and Elliott Shriftman agreed with the team.<sup>258</sup> The following year after hitting .260 with ten extra base hits in fifty-eight games, Paul upped his request to \$940,000.<sup>259</sup> The Rays offered \$625,000.<sup>260</sup> The

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250. *Id.*

251. *Tampa Bay Devil Rays Secure Foundation of New Baseball Operations Department*, MLB.COM, Nov. 3, 2005, [http://tampabay.rays.mlb.com/news/press\\_releases/press\\_release.jsp?ymd=20051103&content\\_id=1264191&vkey=pr\\_tb&fext=.jsp&c\\_id=tb](http://tampabay.rays.mlb.com/news/press_releases/press_release.jsp?ymd=20051103&content_id=1264191&vkey=pr_tb&fext=.jsp&c_id=tb); Jonah Keri, *Prospectus Q&A: Matthew Silverman and Andrew Friedman*, BASEBALLPROSPECTUS.COM, Apr. 19, 2006, <http://www.baseballprospectus.com/article.php?articleid=4989>.

252. *Id.* Tampa Bay was nicknamed the Devil Rays from 1998 through 2007. They changed their name to the Rays prior to the 2008 season, and they turned in their first season with a winning percentage above their previous best season of .435 (70-91) in 2004. The seventy wins was also the previous high before winning ninety-seven games in 2008.

253. *Baseball: Braves' Furcal Ages by Two Years*, N.Y. TIMES, Feb. 16, 2002, at D9.

254. Carter Gaddis, *Yan Loses Arbitration Hearing*, TAMPA TRIB., Feb. 16, 2002, at 4; *Duquette Expects to Keep His Job as Red Sox GM*, CONTRA COSTA NEWS, Feb. 16, 2002, at B2.

255. *Arbitration Figures*, *supra* note 110.

256. *Angels Acquire Schlichting for Paul*, SCOUT.COM, Dec. 20, 2005, <http://angels.scout.com/2/480524.html#>.

257. *Arbitration Figures*, *supra* note 110.

258. Damian Cristodero, *New Hire Is a Boost For Overseas Scouting*, ST. PETERSBURG TIMES, Feb. 17, 2006, at 16C. Marc Topkin noted the participants and timing involved in Paul's first hearing:

Paul's case marked only the second time in Rays history they went to an arbitration hearing. Arguments lasted nearly four hours, with senior vice president/general counsel John Higgins and consultant Tal Smith representing the team and agent Dick Moss making the case for Paul, who was also in the room at the Renaissance Vinoy Resort.

Marc Topkin, *Lee, Rays Find Middle Ground on Contract*, ST. PETERSBURG TIMES, Feb. 16, 2006, at 4C.

259. *Arbitration Figures*, *supra* note 110.

260. *Id.*

arbitration panel of Robert Bailey, Richard Bloch, and Christine Knowlton again selected the Rays's number.<sup>261</sup> After the 2007 season when Paul hit only .190 in thirty-five games and spent time in the minors with Vero Beach and Montgomery, he filed for free agency on October 31.<sup>262</sup> Although Paul resigned with the Rays on January 30, he was released by the Rays on March 29.<sup>263</sup> He did sign with the Astros on April 7, but he was released on June 14 after collecting only seven hits in seventy plate appearances over 28 games for the Astros's AAA affiliate in Round Rock of the Pacific Coast League.<sup>264</sup> Paul, the quintessential backup catcher, finished his major league career with an average of 35.67 games per season in his nine years playing for the Chicago White Sox (White Sox), Cubs, Angels, and Rays.<sup>265</sup>

One interesting feature of the negotiations between the Rays and Aybar and Navarro was that the differences between the figures exchanged in both cases were amongst the closest of all of the forty-six exchanged figures for 2009. The team offer to Aybar for 2009 was \$900,000 while he requested \$1.05 million.<sup>266</sup> The difference was a modest \$150,000, and the midpoint was \$975,000. Dioner Navarro requested \$2.5 million, and the Rays proposed \$2.1 million leaving a difference of \$400,000 and a midpoint of \$2.3 million.<sup>267</sup> The hearing between Navarro and the Rays was one of the three held in February 2009, but the Aybar negotiations produced a twist in the Rays's strategy.<sup>268</sup>

Despite the stated parameters of the Rays's file-and-go strategy, the Rays continued to talk to both Aybar and Navarro about multi-year deals after the

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261. *Baseball Notes*, N.J. RECORD, Feb. 11, 2007, at S11; *Beimel a Starter For Salary Arbitration*, PITT. POST-GAZETTE, Feb. 10, 2007, at C5.

262. *Arbitration Gets Started With Beimel, Paul*, CHI. SUN TIMES, Feb. 10, 2007, at 66.

263. Bill Chastain, *Rays Finalize Their 25-Man Roster: Johnson, Riggans, Hinske Make Team; Guzman, Others Cut*, MLB.COM, Mar. 29, 2008, [http://tampabay.rays.mlb.com/news/article.jsp?ymd=20080329&content\\_id=2464812&vkey=news\\_tb&fext=.jsp&c\\_id=tb](http://tampabay.rays.mlb.com/news/article.jsp?ymd=20080329&content_id=2464812&vkey=news_tb&fext=.jsp&c_id=tb).

264. *Josh Paul Minor League Statistics & History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/minors/player.cgi?id=paul--001jos> (last visited Oct. 19, 2009).

265. *Id.*

266. *Santana, Aybar Hearings Rescheduled*, ESPN.COM, Feb. 13, 2009, <http://sports.espn.go.com/mlb/news/story?id=3906185&campaign=rss&source=MLBHeadlines>.

267. Marc Topkin, *Rays Beat Catcher Navarro in Arbitration*, ST. PETERSBURG TIMES, Feb. 11, 2009, available at <http://www.tampabay.com/sports/baseball/rays/article974900.ece>.

268. Aybar's hearing was scheduled for twelve days after the hearing with Navarro. Bill Chastain, *Rays Sign Aybar to Two-Year Contract: Versatile Veteran's Deal Includes Option for 2011 Season*, MLB.COM, Feb. 18, 2009, [http://tampabay.rays.mlb.com/news/article.jsp?ymd=20090218&content\\_id=3845154&vkey=news\\_tb&fext=.jsp&c\\_id=tb](http://tampabay.rays.mlb.com/news/article.jsp?ymd=20090218&content_id=3845154&vkey=news_tb&fext=.jsp&c_id=tb); Bill Chastain, *Rays Could Be Close With Aybar: Infielder Would Head To Arbitration If No Deal Is Struck*, MLB.COM, Feb. 10, 2009, [http://mlb.mlb.com/news/article.jsp?ymd=20090210&content\\_id=3815050&vkey=news\\_tb&fext=.jsp&c\\_id=tb](http://mlb.mlb.com/news/article.jsp?ymd=20090210&content_id=3815050&vkey=news_tb&fext=.jsp&c_id=tb). See also *Santana, Aybar Hearings Rescheduled*, *supra* note 260.



exchange of figures.<sup>269</sup> The Rays requested a postponement of Aybar's hearing and later signed the utility player to a two-year deal worth \$2.6 million.<sup>270</sup> Aybar received \$975,000, the midpoint figure of the exchanged figures for 2009, and \$1.35 million for 2010.<sup>271</sup> The Rays also have an option for 2011 that would increase the value of the deal to \$6.28 million over three years.<sup>272</sup> So, despite the "file-and-go" strategy, the Rays apparently will make an exception for a multi-year deal. One reason for the flexibility might have been Friedman's absence during a crucial period of negotiations because of his honeymoon.<sup>273</sup> Another reason might relate to the close figures. With so little at stake for either the winner or the loser at a hearing, both sides created an opportunity for an unusual multi-year deal with a non-starter. Apparently the Rays and Navarro's agent Kendall Almerico were still talking about a multi-year deal for the catcher despite passing the "file-and-go" deadline:

It appears that we have reached an impasse and that we will be going to arbitration on Monday . . . . After that, I hope to resume negotiations on a long-term deal so Navi can play in Tampa for the rest of his career. But that may depend on how the Rays present their case and whether the Rays treat Navi respectfully at the hearing as Navi has instructed us to treat the Rays throughout this entire process.<sup>274</sup>

Almerico was unable to negotiate a multi-year deal for Navarro who struggled at the plate in 2009 leaving the small-market Rays with a decision about their catcher during the 2009-2010 off-season. Navarro is eligible for arbitration again after the 2009 season.

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269. Chastain, *supra* note 262.

270. *Id.*

271. *Cot's Baseball Contracts Tampa Bay Rays*, *supra* note 184.

272. *Id.* If the Rays exercise the option for 2011, Aybar will receive a salary of \$2.2 million. *Rays' Willy Aybar Signs Two-Year Contract*, SPORTINGNEWS.COM, Feb. 18, 2009, <http://www.sportingnews.com/mlb/article/2009-02-18/rays-willy-aybar-signs-two-year-contract>. The buyout is a modest \$275,000. *Id.* Aybar's has incentives in his 2010 salary that can push the agreement to \$2.1 million based on the number of plate appearances in 2009. *Id.* The escalator for 2011 would push the deal to \$3.2 million based on the combined total of plate appearances in 2009 and 2010. *Id.*

273. Bill Chastain, *Aybar, Navarro Will Go to Arbitration: Pair of Players Unable to Come to Terms With Rays Before Deadline*, MLB.COM, Jan. 20, 2009, [http://www.mlb.com/news/article.jsp?ymd=20090120&content\\_id=3751465&vkey=news\\_tb&fext=.jsp&c\\_id=tb](http://www.mlb.com/news/article.jsp?ymd=20090120&content_id=3751465&vkey=news_tb&fext=.jsp&c_id=tb).

274. Marc Topkin, *Navarro's Agent: Talks At Impasse, Respect Matters: Rays Cite "Track Record,"* BLOGS.TAMPABAY.COM, Feb. 4, 2009, available at <http://blogs.tampabay.com/rays/2009/02/navarros-agent.html>.

## VIII. THE SETTLEMENTS AFTER EXCHANGE OF FIGURES

An often overlooked aspect of salary arbitration relates to one of the overall goals of single or final offer arbitration: to force each party to submit reasonable proposals and to encourage settlements instead of allowing a third-party to choose one of the two proposals.<sup>275</sup> If either side picks a less defensible position, the arbitrator will strongly favor the more defensible proposal.<sup>276</sup> This is precisely the result in most baseball salary arbitration cases.

A total of forty-six players and teams exchanged numbers by the January 20, 2009 deadline.<sup>277</sup> Between the original filing date of January 15 and the deadline to exchange figures on January 20, 65 of the 111 players and teams reached an agreement.<sup>278</sup> This left 46 teams and players to exchange figures.<sup>279</sup> Each side had an incentive to not force the other side to reveal their figure. The most critical negotiating feature after the exchange of figures is the midpoint between the two numbers because if the case does go to a hearing the typical benchmark for the salary arbitration panel is the midpoint.<sup>280</sup> The arbitrators on each panel basically consider all salaries for comparable players. If the panel thinks that the player is worth \$1.00 more than the midpoint, the panel chooses the player's figure.<sup>281</sup> If the panel thinks the player is worth \$1.00 less than the midpoint, the panel chooses the team's figure.<sup>282</sup> An analysis of the 2009 salary arbitration class that exchanged numbers with their teams follows patterns established for similar groups since 2004.<sup>283</sup>

A recent trend in settlements is an increased number of multi-year contracts.<sup>284</sup> In 2004, there were five multi-year deals; in 2005, there were eight multi-year deals; and in 2006, there were seven multi-year deals.<sup>285</sup> However, in both 2007 and 2008, the number jumped to ten multiyear

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275. James Lincoln Ray, *How Baseball Arbitration Works: MLB Rules Governing the Eligibility and Process of Arbitration*, BASEBALL.SUITE101.COM, Feb. 23, 2008, [http://baseball.suite101.com/article.cfm/how\\_baseball\\_arbitration\\_works](http://baseball.suite101.com/article.cfm/how_baseball_arbitration_works).

276. *Id.*

277. Maury Brown, *2009 MLB Salary Arbitration Vital Stats*, BIZOFBASEBALL.COM, Feb. 20, 2009, [http://www.bizofbaseball.com/index.php?option=com\\_content&view=article&id=2974:2009-mlb-salary-arbitration-vital-stats&catid=66:free-agency-and-trades&Itemid=153](http://www.bizofbaseball.com/index.php?option=com_content&view=article&id=2974:2009-mlb-salary-arbitration-vital-stats&catid=66:free-agency-and-trades&Itemid=153).

278. *Id.*

279. *Id.*

280. Ray, *supra* note 269.

281. *Id.*

282. *Id.*

283. See Appendix Chart 1.

284. *Id.*

285. *Id.*

deals.<sup>286</sup> Sixteen of the forty-six players who exchanged numbers in 2009 signed multi-year agreements with their teams.<sup>287</sup> These players were: Willy Aybar (Rays),<sup>288</sup> Edwin Encarnacion (Reds),<sup>289</sup> Prince Fielder (Brewers),<sup>290</sup> Zack Greinke (Royals),<sup>291</sup> Ryan Howard (Phillies),<sup>292</sup> Jason Kubel (Twins),<sup>293</sup> Paul Maholm (Pittsburgh Pirates),<sup>294</sup> Nick Markakis (Orioles),<sup>295</sup>

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286. *Id.*

287. *Id.*

288. *Cot's Baseball Contracts: Tampa Bay Rays*, *supra* note 184. Two-year, \$2.6 million deal. *Id.* Aybar will receive \$975,000 in 2009 and \$1.35 million in 2010. *Id.* The Rays have an option for 2011 at \$2.2 million, with a \$275,000 buyout. *Id.* The salary in 2010 will increase by \$750,000 if Aybar meets a certain threshold on plate appearances. *Id.* The salary in 2011 will increase by \$1,000,000 if Aybar meets a certain threshold for plate appearances in 2009 and 2010. *Id.*

289. *Cot's Baseball Contracts: Toronto Blue Jays*, COT'S BASEBALL CONTRACTS [http://mlbcontracts.blogspot.com/2005/01/toronto-blue-jays\\_05.html](http://mlbcontracts.blogspot.com/2005/01/toronto-blue-jays_05.html) (last visited Oct. 19, 2009). Two-year, \$7.6 million deal. *Id.* Encarnacion will receive \$2 million in 2009 and \$4.75 million in 2010. *Id.* Encarnacion also received an \$850,000 signing bonus. *Id.* \$25,000 in incentives for 600 plate appearances. *Id.*

290. *Cot's Baseball Contracts: Milwaukee Brewers*, COT'S BASEBALL CONTRACTS <http://mlbcontracts.blogspot.com/2005/01/milwaukee-brewers.html> (last visited Oct. 19, 2009). Two-year, \$18 million deal. *Id.* Fielder will receive \$6.5 million in 2009 and \$11.5 million in 2010, plus a \$1 million signing bonus. *Id.* Fielder can reportedly earn an additional \$250,000 in each season if he reaches 500 plate appearances. *Id.*

291. *Cot's Baseball Contracts: Kansas City Royals*, COT'S BASEBALL CONTRACTS, [http://mlbcontracts.blogspot.com/2004/12/kansas-city-royals\\_28.html](http://mlbcontracts.blogspot.com/2004/12/kansas-city-royals_28.html) (last visited Oct. 19, 2009). Four-year, \$38 million deal. *Id.* Greinke will receive \$3.75 million in 2009, \$7.25 million in 2010, and \$13.5 million in both 2011 and 2012. *Id.*

292. *Cot's Baseball Contracts: Philadelphia Phillies*, *supra* note 229. Three-year, \$54 million deal. *Id.* Howard will receive \$15 million for 2009; \$10 million; for 2010; \$20 million for 2011. *Id.* The salaries for 2010 and 2011 will be increased by \$1 million if Howard wins the Most Valuable Player Award in either previous season. *Id.* The deals will be increased by \$500,000 for a second-place finish in the Most Valuable Player voting in either previous season. *Id.* Other performance bonuses include \$100,000 for a Silver Slugger Award, a Gold Glove Award, or a World Series Most Valuable Player Award, or for Howard being voted to start the All-Star game. *Id.* There is also available \$50,000 selection to the All-Star team or for a League Championship Series Most Valuable Player Award and a \$1 million assignment bonus if Howard is traded before November 1, 2010. *Id.* There will not be a bonus due Howard for a trade after that date. *Id.*

293. *Cot's Baseball Contracts: Minnesota Twins*, *supra* note 218. Two-year, \$7.2 million deal includes a club option for 2011 at \$5.25 million. *Id.* The deal could end up totaling as much as \$12.25 million. *Id.* Kubel will receive \$2.75 million in 2009 and \$4.1 million in 2010. The 2011 also includes a \$350,000 buyout. *Id.* There is an incentive package worth up to \$150,000 in performance bonuses. *Id.*

294. *Cot's Baseball Contracts: Pittsburgh Pirates*, COT'S BASEBALL CONTRACTS, [http://mlbcontracts.blogspot.com/2005/01/pittsburgh-pirates\\_08.html](http://mlbcontracts.blogspot.com/2005/01/pittsburgh-pirates_08.html) (last visited Oct. 19, 2009). Three-year, \$14.5 million deal. *Id.* Maholm will receive \$3.5 million in 2009, \$4.5 million in 2010 and \$5.75 million in 2011. *Id.* A year of potential free agency is also covered if the option is exercised. *Id.* Those three figures equal \$13.75 million. The buyout for 2012 is worth \$750,000. *Id.*

295. *Cot's Baseball Contracts: Baltimore Orioles*, COT'S BASEBALL CONTRACTS, [http://mlbcontracts.blogspot.com/2005/01/baltimore-orioles\\_112321768568552760.html](http://mlbcontracts.blogspot.com/2005/01/baltimore-orioles_112321768568552760.html) (last visited

Nate McLouth (Pittsburgh Pirates),<sup>296</sup> Ervin Santana (Angels),<sup>297</sup> and Jayson Werth (Phillies).<sup>298</sup> Since 2004, there have been fifty-one multi-year deals—twenty-three percent of all settlements.<sup>299</sup>

Appendix Chart 1 breaks down all the deals at the midpoint and above and below the midpoint.<sup>300</sup> Every year, the lowest percentage of settlements falls into the category of above the midpoint.<sup>301</sup> For the six-year period, only twenty-three settlements or ten percent were above the midpoint. Only five of the forty-six players settled for a figure above the midpoint in 2009.<sup>302</sup> Those five players were: Justin Duchscherer (Oakland Athletics), Casey Kotchman (Atlanta Braves), Ryan Ludwick (Cardinals), Mark Teahen (Royals), and Rickie Weeks (Brewers).<sup>303</sup>

Eleven of the forty-six players in the 2009 class signed at the midpoint.<sup>304</sup> They were: Rick Ankiel (Cardinals), Brian Bannister (Royals), Jeff Francoeur (Atlanta Braves), Matt Guerrier (Twins), Corey Hart (Brewers), Conor Jackson (Arizona Diamondbacks), Mike Jacobs (Royals), Kelly Johnson (Atlanta Braves), John Maine (Mets), Justin Verlander (Tigers), and Ryan

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Oct. 19, 2009). Six-year, \$66.1 million deal covering years 2009 through 2014 with a mutual option for 2015. *Id.* Markakis received a \$1 million signing bonus on approval and will receive an addition \$1.1 million in April 2010. *Id.* Markakis will receive \$3 million in 2009; \$6.75 million in 2010; \$10.25 million in 2011; \$12 million in 2012; \$15 million in 2013, and \$15 million in 2014. *Id.* The mutual option for 2015 is \$17.5 million with a \$2 million buyout if the club declines to exercise the option. *Id.* There is no buyout if the player declines to exercise the option. *Id.* There is a limited no-trade clause that allows Markakis to block deals to 8 clubs. *Id.* The performance bonuses and escalators amount to \$7.5 million. *Id.*

296. *Cot's Baseball Contracts: Pittsburgh Pirates*, *supra* note 287; *Cot's Baseball Contracts: Atlanta Braves*, COT'S BASEBALL CONTRACTS, [http://mlbcontracts.blogspot.com/2005/01/atlanta-braves\\_15.html](http://mlbcontracts.blogspot.com/2005/01/atlanta-braves_15.html) (last visited Oct. 19, 2009). Three-year, \$15.75 million deal. *Cot's Baseball Contracts: Atlanta Braves*, *supra* note 289. McLouth will receive \$2 million for 2009, \$4.5 million for 2010 and \$6.5 million for 2011. *Id.* McLouth also received a \$1.5 million signing bonus. *Id.* There is a club option of \$10.65 million for 2012 and a \$1,250,000 buyout if that option is not exercised. *Id.*

297. *Cot's Baseball Contracts: Los Angeles Angels of Anaheim*, *supra* note 80. Four-year, \$30 million deal. *Id.* Santana will receive \$3.8 million in 2009; \$6 million in 2010; \$8 million in 2011; and \$11.2 million in 2012. *Id.* There is a \$13 million club option for 2013 and a \$1 million buyout. *Id.*

298. *Cot's Baseball Contracts: Philadelphia Phillies*, *supra* note 229. Two-year, \$10 million deal. *Id.* Werth will receive \$3 million in 2009 and \$7 million in 2010. *Id.*

299. See Appendix Chart 1.

300. *Id.*

301. *Id.*

302. *Arbitration Figures*, *supra* note 110.

303. See Appendix Chart 2.

304. See Appendix Chart 1.

Zimmerman (Nationals).<sup>305</sup> For the six-year period, twenty-three or ten percent of the 226 settlements were above the midpoint.<sup>306</sup>

Sixteen of the forty-three players in the 2009 class signed below the midpoint.<sup>307</sup> They were: Garret Atkins (Rockies), Brian Bruney (Yankees), Marlon Byrd (Rangers), Melky Cabrera (Yankees), Shawn Camp (Blue Jays), Chad Durbin (Phillies), Andre Ethier (Los Angeles Dodgers), Pedro Feliciano (Mets), Geoff Geary (Astros), Maicer Izturis (Angels), Scott Olsen (Nationals), Wandy Rodriguez (Astros), George Sherrill (Orioles), Brian Tallet (Blue Jays), David Weathers (Reds), and Josh Willingham (Nationals).<sup>308</sup> For the six years from 2004 through 2009, the largest single category each year is the group that signed below the midpoint.<sup>309</sup>

There is one overall conclusion that can be drawn from the data regarding all categories: the system does work to force a negotiated settlement without reliance on the arbitration panel to determine the final outcome. Another conclusion, although arguable, is that management has a slight upper hand because players rarely get a contract above the midpoint. The argument hinges upon whether one feels that the midpoint represents an accurate assessment of the players' market values. It is far more common for a player to settle at or below the midpoint. Since nearly all players receive a sizeable increase in their salary, this fact underscores the lack of leverage in the pre-arbitration eligible group to force a market-based salary. Although there is some artificiality in the "market salary" for players in the arbitration-eligible group or for free agents who opt for arbitration, the result is far better for the players who are eligible for arbitration than those who are not.<sup>310</sup> For the free agent group, the impact of salary arbitration is significant and important.<sup>311</sup> The players in the arbitration-eligible group are responsible for pushing salaries upward because the market includes all eligible players in all MLB markets.<sup>312</sup> Plus, each salary is set by the process with only one buyer of that player's services. The free agent market, on the other hand, provides players with multiple potential buyers.<sup>313</sup> A true superstar, like Manny Ramirez with

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305. See Appendix Chart 2.

306. See Appendix Chart 1.

307. See Appendix Chart 2.

308. *Id.*

309. *Id.*

310. See generally Rich Lederer, *Comparing First-Year Eligible Arbitration Signings*, BASEBALLANALYSTS.COM, Feb. 23, 2009, [http://baseballanalysts.com/archives/2009/02/\\_birthdate\\_ml\\_s.php](http://baseballanalysts.com/archives/2009/02/_birthdate_ml_s.php).

311. *Id.*

312. *Id.*

313. Jeff Passan, *Free-Agent Compensation System is Unfair*, YAHOO SPORTS.COM, Sept. 5,

his current agent Scott Boras, can use this leverage to great advantage.<sup>314</sup> However, players who might have done well in the arbitration system must still produce each year to continue to drive their own salary upwards. The case study of Joe Crede at the end of this article will help explain how his career performance and his movement through the three groups impacted his annual salaries. The salary history of nearly all other players who reach free agency by playing for six credited years follows the same pattern.

#### IX. THE THREE HEARING: SHAWN HILL, DIONER NAVARRO AND DAN UGGLA

In 2009, only 3 of the 111 players who filed for salary arbitration went to the hearing stage.<sup>315</sup> Interestingly, Shawn Hill's case involved one of the few where the exchanged figures were well below \$1 million.<sup>316</sup> The other two involved Dioner Navarro and Dan Uggla.<sup>317</sup> In both cases, the "file-and-go" strategy forced a hearing.

##### *A. Shawn Hill*

The first hearing in 2009 involved Shawn Hill and the Nationals.<sup>318</sup> Hill's hearing took place on Friday, February 6, in Phoenix, Arizona, with the Nationals offering \$500,000 and Hill requesting \$775,000.<sup>319</sup> Hill had been paid \$402,000 for the 2008 season, and he was one of the "Super Twos" in the 2009 group with two years and 153 days of service time.<sup>320</sup>

Hill was drafted by the Montreal Expos (Expos) in the sixth round of the 2000 draft.<sup>321</sup> The native of Mississauga, Ontario, started his minor league career with the Expos's Gulf Coast Rookie League team.<sup>322</sup> After stops in Vermont, Clinton, Brevard County, and Harrisburg, Hill debuted with the

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2009, <http://sports.yahoo.com/mlb/news?slug=jp-typea090409&prov=yahoo&type=lgns>.

314. See *Manny Takes Physical, Completes Deal*, ESPN.COM, Mar. 5, 2009, <http://sports.espn.go.com/mlb/news/story?id=3953242>.

315. *Arbitration Figures*, *supra* note 110.

316. *Harlan, Hill Earn a Win in Arbitration*, WASH. POST, Feb. 8, 2009, at D4.

317. *Arbitration Figures*, *supra* note 110.

318. Alden Gonzalez, *Hill First Player to Arbitration in 2009: Right-Hander Asking For \$775,000 vs. Washington's Offer of \$500,000*, MLB.COM, Feb. 6, 2009, [http://florida.marlin.mlb.com/nes/article.jsp?ymd=20090115&content\\_id=3746430&vkey=news\\_fl&fext=.jsp&c\\_id=fla; Nats' Hill Waits For Arbitration Decision](http://florida.marlin.mlb.com/nes/article.jsp?ymd=20090115&content_id=3746430&vkey=news_fl&fext=.jsp&c_id=fla; Nats' Hill Waits For Arbitration Decision), ESPN.COM, Feb. 6, 2009, <http://sports.espn.go.com/mlb/news/story?id=3889976>.

319. *Shawn Hill Statistics*, *supra* note 233.

320. *Id.*

321. Hill was selection 165 in the sixth round. *2000 MLB Draft History - Round 6*, MLB.COM, <http://www.mylbldraft.com/2000/round6> (last visited Oct. 19, 2009).

322. *Shawn Hill Statistics*, *supra* note 233.

Expos on June 29 against the Phillies.<sup>323</sup> Hill missed the 2005 season after Tommy John surgery on his right elbow.<sup>324</sup> Hill also missed parts of the 2006 and 2007 season when he pitched in the minors at Harrisburg, New Orleans, Potomac, and Columbus, while also appearing in twenty-two games with the Nationals winning five and losing eight.<sup>325</sup> Hill was only able to pitch in twelve games for the Nationals in 2008 posting a 1-5 record with a 5.83 ERA.<sup>326</sup> Hill spent part of the season on the disabled list, and Dr. James Andrews performed arthroscopic surgery on Hill's pitching arm on September 5, 2008.<sup>327</sup> Because his career had been limited to thirty-seven starts, the Nationals felt that he deserved no more than \$100,000 above the league minimum.<sup>328</sup>

The arbitration panel of Robert Bailey, Frederic Horowitz, and Elizabeth Neumeier decided the case in favor of Hill.<sup>329</sup> Hill responded to the decision by noting "I'm mildly surprised, just because the owners tend to have the advantage historically. Definitely happy, obviously, but just relieved at the same to be done and over with it all."<sup>330</sup>

Hill, however, did not last through spring training with the Nationals before being placed on waivers for the purpose of granting him his unconditional release.<sup>331</sup> Hill was paid one-sixth of the \$775,000 that he was awarded at the hearing.<sup>332</sup> Hill's injury problems persisted during spring

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323. Hill started the game and gave up eight earned runs in two and two-thirds innings. *Shawn Hill Pitching Gamelogs*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/gl.cgi?t=hillsh01&t=p&year=2004> (last visited Oct. 19, 2009). The Phillies eventually won the game 17-7. *Id.* Hill won his next start on July 4 against the Toronto Blue Jays in one of the last all-Canadian interleague games. *Id.* His final start of the season for the Expos was a loss against the Pittsburgh Pirates. *Id.* The Pirates defeated the Expos, 11-0, on July 9. *Id.*

324. *Id.*

325. *Id.*

326. *Shawn Hill Statistics*, *supra* note 233.

327. Brock, *supra* note 236.

328. *Arbitration Figures*, *supra* note 110.

329. Alden Gonzalez, *Hill Awarded \$775,000 in Arbitration; Nationals Right-Hander First Player To Win Hearing This Year*, MLB.COM, Feb. 7, 2009, [http://mlb.mlb.com/news/article.jsp?ymd=20090207&content\\_id=3807522&vkey=news\\_was&fext=.jsp&c\\_id=was](http://mlb.mlb.com/news/article.jsp?ymd=20090207&content_id=3807522&vkey=news_was&fext=.jsp&c_id=was); Chico Harlan, *Hill Wins Arbitration Case*, WASH. NAT'L S J., available at [http://voices.washingtonpost.com/nationalsjournal/2009/02/hill\\_wins\\_arbitration\\_case.html?wprss=nationalsjournal](http://voices.washingtonpost.com/nationalsjournal/2009/02/hill_wins_arbitration_case.html?wprss=nationalsjournal).

330. Howard Fendrich, *Nats P Shawn Hill Wins Salary Arbitration Case*, ABCNEWS.COM, Feb. 7, 2009, <http://abcnews.go.com/Sports/wireStory?id=6827435>.

331. Bill Ladson, *Nationals Release Righty Hill: Balester, Martis and Zimmermann Compete For Rotation Spots*, MLB.COM, Mar. 18, 2009, [http://washington.nationals.mlb.com/news/article.jsp?ymd=20090318&content\\_id=4012982&vkey=news\\_was&fext=.jsp&c\\_id=was](http://washington.nationals.mlb.com/news/article.jsp?ymd=20090318&content_id=4012982&vkey=news_was&fext=.jsp&c_id=was).

332. *Id.*

training, and he had only been able to pitch twice due to forearm tightness.<sup>333</sup> Chico Harlan noted in an article for the *Washington Post* that the payment to Hill of just under \$130,000 was exercised because of a deadline for the payment of a fractional amount.<sup>334</sup>

To replace Hill on the pitching staff, the Nationals signed Joe Beimel for \$2 million on the same day that they released Hill.<sup>335</sup> Beimel went to a hearing with the Dodgers in 2007, and the arbitration panel of Stephen Goldberg, Elizabeth Neumeier, and John Sands sided with the Los Angeles Dodgers's (Dodgers) figure of \$912,500.<sup>336</sup> Beimel was asking for \$1.25 million.<sup>337</sup> Neumeier served on the panels for both Hill and Beimel. Thus, Hill and Beimel both have a similar recent arbitration experience while sharing an interesting career intersection on the same day in March 2009. However, Beimel did not complete the season with the Nationals; he was traded to the Rockies on July 31, 2009 for minor league pitchers Ryan Mattheus and Robinson Fabian.<sup>338</sup>

### B. Dioner Navarro

Dioner Navarro's arbitration hearing was held on Monday, February 9.<sup>339</sup> The Rays offered \$2.1 million, and Navarro requested \$2.5 million, leaving a midpoint figure of \$2.3 million.<sup>340</sup> Navarro was eligible for arbitration for the

333. *Id.*

334. Chico Harlan, *Nats Sever Ties With Hill, Sign Beimel to 1-Year Deal*, WASH. POST, Mar. 19, 2009, at E1, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/18/AR2009031803965.html>.

335. Beimel, who started his major league career as a starter with the Pittsburgh Pirates posted a 5-1 record last year in 71 games for the Dodgers. *Joe Beimel Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/b/beimejo01.shtml> (last visited Oct. 19, 2009). His 2.02 ERA was the best of his eight-year career. *Id.* The Nationals will be his fifth team. *Id.* Beimel also pitched for the Minnesota Twins in 2004 and the the Rays in 2005. *Id.* Beimel became a free agent for the first time at the end of 2008 season. *Id.* His contract with the Nationals is a little under the amount he earned last year with the incentives that he met. Tony Jackson, *Dodgers Haven't Ruled Out Signing Joe Beimel*, INSIDESOCAL.COM, Mar. 8, 2009, <http://www.insidesocal.com/dodgers/2009/03/dodgers-havent.html>.

336. *Beimel, A Starter For Salary Arbitration*, PITT. POST-GAZETTE, Feb. 10, 2007, at C5.

337. *Id.*

338. Bill Ladson, *Nats Part Ways with Johnson, Beimel; First Baseman to Marlins, Lefty to Rox; Three Prospects Acquired*, MLB.COM, July 31, 2009, [http://washington.nationals.mlb.com/news/article.jsp?ymd=20090731&content\\_id=6169098&vkey=news\\_was&fext=.jsp&c\\_id=was](http://washington.nationals.mlb.com/news/article.jsp?ymd=20090731&content_id=6169098&vkey=news_was&fext=.jsp&c_id=was).

339. Tommy Rancel, *More on Arbitration and Dioner Navarro*, DRAYSBAY.COM, Jan. 23, 2009, <http://mobile.draysbay.com/2009/1/23/734417/more-on-arbitration-and-di>; Mark Topkin, *Sides Hope to Battle Without Bitterness*, ST. PETERSBURG TIMES, Feb. 9, 2009.

340. *Navarro to Earn \$2.1 Million*, ESPN.COM, Feb. 10, 2009, <http://sports.espn.go.com/mlb/news/story?id=3896848>.



first time in 2009.<sup>341</sup>

Tommy Rancel and Mark Topkin, two writers who analyzed Navarro's case, discussed John Buck, the Royals's catcher who settled for \$2.2 million with the Royals in 2008—his first year of eligibility.<sup>342</sup> Although Buck hit only .222 in 2007, he did post a career-high eighteen home runs.<sup>343</sup> Buck hit only .224 in 2008 although he did have a .304 on base percentage.<sup>344</sup> His home run total was cut in half, and he failed to throw out even twenty percent of runners stealing on him and his pitcher.<sup>345</sup> Still, Buck was able to increase his 2009 salary to \$2.9 million, after signing with the Royals in January.<sup>346</sup> Tommy Rancel also discussed Yadier Molina as a comparable in his article, but Molina signed a four-year, \$15.5 million multi-year deal covering 2008-2011, and multi-year deals are usually avoided in comparable data analysis in arbitration hearings.<sup>347</sup>

Kendall Almerico argued Navarro's case against Rays's General Counsel John Higgins with support from members of the Proskauer Rose law firm.<sup>348</sup> Almerico argued, "Navi's arbitration number is very reasonable, especially given that he is offering the Rays a significant hometown discount over what the other All-Star catchers like Mauer and McCann were paid."<sup>349</sup> Joe Mauer signed a four-year, \$33 million deal with the Twins for 2007-2010.<sup>350</sup> Once again, multi-year deals usually are not discussed in hearings. Furthermore, Mauer grew up and attended high school in St. Paul, Minnesota.<sup>351</sup> Thus, a "hometown discount," would also apply to Mauer, and the Twins's catcher posted extremely strong numbers in 2006 when he was the American League batting champion.<sup>352</sup> Topkin also noted that Navarro's side would argue that

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341. *Id.* Navarro had amassed service time of three years and one hundred three days.

342. *See generally* Rancel, *supra* note 332; Topkin, *supra* note 332.

343. *John Buck Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/b/buckjo01.shtml> (last visited Oct. 19, 2009).

344. *Id.*

345. *Id.*

346. Dick Kaegel, *Buck, Peralta Agree To One-Year Deals; Royals Avoid Salary Arbitration By Beating Tuesday Deadline*, MLB.com, Jan. 20, 2009, [http://kansascity.royals.mlb.com/news/article.jsp?ymd=20090120&content\\_id=3751135&vkey=news\\_kc&fext=.jsp&c\\_id=kc](http://kansascity.royals.mlb.com/news/article.jsp?ymd=20090120&content_id=3751135&vkey=news_kc&fext=.jsp&c_id=kc).

347. Rancel, *supra* note 332.

348. Ed Edmonds, *Dioner Navarro's Arbitration Hearing Today*, SPORTS LAW BLOG, Feb. 9, 2009, <http://sports-law.blogspot.com/2009/02/dioner-navarros-arbitration-hearing.html>.

349. Topkin, *supra* note 332.

350. *Cot's Baseball Contracts: Minnesota Twins*, *supra* note 218.

351. *Joe Mauer Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/m/mauerjo01.shtml> (last visited Oct. 19, 2009).

352. *Id.*

“L.A.’s Russell Martin is getting \$3.9 million” plus the first year eligibility figures of All Stars Joe Mauer (\$3.75 million), and Atlanta’s Brian McCann (\$3.5 million) were worthy of consideration.<sup>353</sup> However, McCann’s deal was also for multiple years—six years covering 2007-2012, \$26.8 million.<sup>354</sup>

On the other side of the ledger, Topkin pointed out that the “Rays can cite others, such as John Buck (\$2.2 million)<sup>355</sup>, Ryan Doumit (\$2.05 million),<sup>356</sup> Johnny Estrada,<sup>357</sup> and Mike Napoli (\$2 million),<sup>358</sup> and Kelly Shoppach (\$1.95 million).”<sup>359</sup> Doumit’s number is also year one of a three-year deal. Other catchers who filed in 2009 include Gerald Laird of the Tigers and Humberto Quintero of the Astros. Laird was a Scott Boras client with four years and eighty-eight days of service entering the season. Laird signed for \$1.6 million in 2008 and \$2.8 million in 2009.<sup>360</sup> Quintero, who made \$405,000 in 2008 when he established a career-high by playing in fifty-nine games, signed a deal with the Astros for \$610,000 for 2009.<sup>361</sup>

Both Napoli and Shoppach signed their contracts with the Angels and the Cleveland Indians, respectively, in January 2009 - their first year of eligibility.<sup>362</sup> Navarro’s 2008 accomplishments include an increased batting average, selection to the American League All-Star Team, and an increase in throwing out runners from thirty percent to thirty-eight percent, during a season where he caught 117 games and hit .293 during the playoffs.<sup>363</sup>

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353. Topkin, *supra* note 332.

354. *Cot’s Baseball Contracts: Pittsburgh Pirates*, *supra* note 289.

355. *Cot’s Baseball Contracts: Kansas City Royals*, *supra* note 284.

356. *Cot’s Baseball Contracts: Pittsburgh Pirates*, *supra* note 287.

357. *Id.* Estrada was released on July 31, 2008, with a salary of \$1,250,000. Bill Ladson, *Nats Release Lo Duca, Estrada, Lopez: Dukes Activated From Disabled List; Bonifacio to be Recalled*, MLB.com, Aug. 1, 2008, [http://washington.nationals.mlb.com/news/article.jsp?ymd=20080731&content\\_id=3234026&vkey=news\\_was&fext=.jsp&c\\_id=was](http://washington.nationals.mlb.com/news/article.jsp?ymd=20080731&content_id=3234026&vkey=news_was&fext=.jsp&c_id=was).

358. *Cot’s Baseball Contracts: Los Angeles Angels of Anaheim*, *supra* note 80.

359. Topkin, *supra* note 332.

360. *Cot’s Baseball Contracts: Detroit Tigers*, COT’S BASEBALL CONTRACTS, [http://mlbcontracts.blogspot.com/2005/01/detroit-tigers\\_21.html](http://mlbcontracts.blogspot.com/2005/01/detroit-tigers_21.html) (last visited Oct. 19, 2009). Laird failed to earn a possible bonus of \$50,000 each in 2008 for 115 and 120 games played while a member of the Texas Rangers. *Id.* Laird’s 2009 deal with the Tigers offers performance bonuses of \$50,000 for 100 and 110 games played. *Id.* Laird earned the full amount of his performance bonus by playing in 135 games. *Gerald Laird Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/l/lairdge01.shtml> (last visited Nov. 11, 2009).

361. Alyson Footer, *Astros, Quintero Avoid Arbitration; Catcher Signs One-Year Contract Worth \$610,000*, MLB.COM, Jan. 19, 2009, [http://houston.astros.mlb.com/news/article.jsp?ymd=20090119&content\\_id=3750350&vkey=news\\_hou&fext=.jsp&c\\_id=hou](http://houston.astros.mlb.com/news/article.jsp?ymd=20090119&content_id=3750350&vkey=news_hou&fext=.jsp&c_id=hou).

362. *Arbitration Figures*, *supra* note 110.

363. *Dioner Navarro Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/n/navardi01.shtml> (last visited Oct. 19, 2009).

The arbitration panel of Elizabeth Neumeier, James Oldham, and Steven Wolf agreed with Higgins and the Rays. Elizabeth Neumeier's record as a panelist is 12-9 in favor of teams. Steven Wolf had a 3-3 record as a panelist. Neumeier and Wolf were together as panelists in 2008 when they split two of the eight 2008 hearings. Their panels sided with Oliver Perez against the Mets, but they held for the Angels against Francisco Rodriguez.<sup>364</sup> The Rays were able to maintain their position of never losing a hearing. The Phillies had been undefeated in hearings until 2008 when they suffered their first loss in eight hearings against Ryan Howard.

### C. Dan Uggla

Dan Uggla's arbitration hearing was held on Wednesday, February, 11.<sup>365</sup> The Marlins offered \$4 million, and Uggla countered with a request for \$5.35 million.<sup>366</sup> With a midpoint of \$4.88 million, the difference between the two exchanged figures was \$950,000. Uggla, was paid \$417,000 for the 2008 season and, as is so often the case during the first year of arbitration eligibility, he was projected to receive a substantial salary increase regardless of whether he won his hearing.<sup>367</sup> Uggla's major league career was a true success story after the Marlins selected him as a Rule 5 Draft pick in December 2005.<sup>368</sup> After stops in Yakima, South Bend, Lancaster, and El Paso, Uggla had advanced only to AA Tennessee by 2005.<sup>369</sup> Although he belted 21 home runs with a .297 batting average and 87 RBIs for the Smokies while playing all four infield positions,<sup>370</sup> the Diamondbacks made him available in the minor league draft.<sup>371</sup> After his selection by the Marlins, he emerged as a power-hitting second baseman in south Florida.<sup>372</sup>

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364. Marty Noble, *Perez Wins Arbitration Case.; Hearing Was First For Mets Since Cone's 16 Years Ago*, MLB.COM, Feb. 22, 2008, [http://newyork.mets.mlb.com/news/article.jsp?ymd=20080222&content\\_id=2384055&vkey=spt2008news&fext=.jsp&c\\_id=nym](http://newyork.mets.mlb.com/news/article.jsp?ymd=20080222&content_id=2384055&vkey=spt2008news&fext=.jsp&c_id=nym); *F. Rodriguez Loses, Gets \$10 Million*, WASH. POST, Feb. 23, 2008, at E8.

365. *Dan Uggla Goes to Arbitration With Marlins*, SPORTINGNEWS.COM, Feb. 11, 2009, <http://www.sportingnews.com/mlb/article/2009-02-11/dan-uggla-goes-to-arbitration>.

366. Joe Frisaro, *Uggla Wins in Arbitration Hearing; Marlins Second Baseman Awarded \$5.35 Million For 2009*, MLB.COM, Feb. 12, 2009, [http://florida.marlin.mlb.com/news/article.jsp?ymd=20090212&content\\_id=3820664&vkey=news\\_fla&fext=.jsp&c\\_id=fla](http://florida.marlin.mlb.com/news/article.jsp?ymd=20090212&content_id=3820664&vkey=news_fla&fext=.jsp&c_id=fla).

367. *Id.*

368. *Id.* Uggla was selected from the Arizona Diamondbacks. *Id.*

369. *Dan Uggla Minor League Statistics & History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/minors/player.cgi?id=uggla-001> dan (last visited Oct. 19, 2009).

370. *Id.*

371. *Id.*

372. *Id.*

Despite an appearance in the 2008 All-Star Game where he made a record three errors at second base in the National League's extra inning loss, Uggla was basing his case largely on his three-year average of thirty home runs and ninety RBIs.<sup>373</sup> These numbers were particularly impressive for a second baseman. The Marlins would counter with his high strikeout total of 461 during those three years<sup>374</sup> and his defensive liabilities.

The panel consisted of Richard Bloch, Frederic Horowitz, and Stephen Wolf. Richard Bloch, an experienced and veteran baseball salary arbitrator, has a 21-8 record in favor of teams.<sup>375</sup> That seventy-one percent pro-team statistic is in sharp contrast to most veteran arbitrators who are typically much closer to fifty percent. Fredric Horowitz has a 2-1 panel record based on his earlier 2009 finding in favor of Shawn Hill and as a member of the 2008 Mark Loretta panel that decided in favor of the Astros. Stephen Wolf, also a member of the Navarro panel pushed his record to an even 4-4.<sup>376</sup> Uggla was the topic of trade talks most of the off-season.<sup>377</sup>

Uggla's hearing team might have argued that an appropriate comparison was to the pair of young power-hitting middle infielders who helped lead the

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373. Uggla also struck out three times and grounded into a double play. *Marlins 2B Uggla Set All-Star Game Record With 3 Errors*, ESPN.COM, July 16, 2009, <http://sports.espn.go.com/mlb/allstar08/news/story?id=3491330>. He made two errors in the tenth inning after replace Philadelphia's Chase Utley in the lineup. *Id.* The first was on a grounder by Michael Young, and he followed that by botching Carlos Quentin's ground ball. *Id.* The record-breaking third error came on another grounder by J.D. Drew. *See also*, Clark Spencer, *Florida Marlins' Dan Uggla Battling Back After a Long Struggle*, MIAMI HERALD, Aug. 12, 2009, available at <http://www.miamiherald.com/sports/baseball/florida-marlins/story/1183575.html>.

374. *Dan Uggla Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/u/ugglada01.shtml> (last visited Oct. 19, 2009).

375. Richard Bloch's decisions for teams are as follows: Shane Andrews (1999), Wally Backman (1986), Len Barker (1983), Carlos Beltran (2003), Bruce Berenyi (1983), Kevin Brown (1993), Bruce Chen (2003), Osvaldo Fernandez (2001), Rich Gedman (1986), Dwight Gooden (1988), Joe Hesketh (1990), Jack McDowell (1992), Kevin Millwood (2001), Darren Oliver (1999), Josh Paul (2007), Ted Power (1987), Dave Revering (1982), Ken Schrom (1987), Billy Sample (1983), Alfonso Soriano (2006), and Javier Vazquez (2001). Bloch's decisions for players are as follows: Freddy Garcia (2003), Charles Johnson (1998), Jack Morris (1987), Tony Pena (1983), Bip Roberts (1993), Bryan Smith (1986), Tim Teufel (1989), and Dan Uggla (2009).

376. Stephen Wolf's decisions for teams are as follows: Jeremy Affeldt (2005), Felipe Lopez (2008), Dioner Navarro (2009), and Francisco Rodriguez (2008). Stephen Wolf's decisions for players are as follows: Kyle Lohse (2006), Oliver Perez (2008), Dan Uggla (2009), and Todd Walker (2007).

377. The talk was fueled by the Marlins trade for Emilio Bonifacio, pitcher P.J. Dean, and infielder Jake Smolinski from the Washington Nationals for pitcher Scott Olsen and outfielder Josh Willingham, who put in significant time in the minors at catcher. *See MLB News: Transactions*, THE1CONSTANT.MLBLOGS.COM, Dec. 29, 2008, [http://the1constant.mlblogs.com/archives/2008/12/hot\\_stove\\_transactions.html](http://the1constant.mlblogs.com/archives/2008/12/hot_stove_transactions.html).

Phillies to the World Series championship in 2008.<sup>378</sup> Chase Utley avoided his first year of arbitration eligibility as well as a number of free agency years by signing a seven-year, \$85 million deal covering 2007-2013.<sup>379</sup> Because of Utley's long-term deal, his numbers should be avoided or treated carefully for comparison purposes. However, few contemporary second basemen have the power numbers of Uggla and Utley. Utley's 2008 salary was \$7.5 million and his 2009 figure is \$11 million.<sup>380</sup>

A few years ago, Jimmy Rollins moved from \$450,000 in 2003 to \$2.43 million in 2004, his first year of arbitration eligibility.<sup>381</sup> The following year he increased his base salary to \$3.85 million before landing a multi-year deal in 2006.<sup>382</sup> Rollins hit 30 home runs and drove in 94 runs in his Most Valuable Player season of 2007.<sup>383</sup>

Other contracts that the panel could have considered include Kelly Johnson, Brandon Phillips, and Rickie Weeks. Johnson and the Atlanta Braves exchanged figures in 2009. Johnson requested \$3.3 million, while the Braves countered with \$2.35 million.<sup>384</sup> Johnson signed for the midpoint figure of \$2.83 million.<sup>385</sup> Brandon Phillips of the Reds has more service time than Uggla, and he signed a four-year, \$27 million deal with the Reds covering 2008-2011.<sup>386</sup> Rickie Weeks more than doubled his 2008 salary when he signed for \$2.45 million, a figure slightly above the midpoint of \$2.4 million.<sup>387</sup> When Weeks tore a muscle in his left hand on May 18, the

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378. Todd Zolecki, *Phils' Double-Play Duo Ranks Among the Best*, PHILADELPHIA INQUIRER, Mar. 3, 2006, at D1.

379. *Utley Agrees to Seven-Year, \$85M Extension*, ESPN.COM, Jan. 22, 2007, <http://sports.espn.go.com/mlb/news/story?id=2738188>.

380. *Cot's Baseball Contracts: Philadelphia Phillies*, *supra* note 229.

381. Marcus Hayes, *One-Year, \$2.4M Deal Signed By Rollins*, PHILADELPHIA DAILY NEWS, Jan. 16, 2004, at Sports at 141.

382. Don Bostram, *Phillies Sign Rollins, Polanco, Padilla: They Avoid Arbitration With All Three With One-Year Contracts*, ALLENTOWN MORNING CALL, Jan. 19, 2005, at C1; Todd Zolecki, *Phils Show Rollins the Money: The All-Star Shortstop, Who Could Have Been a Free Agent After Next Season, Signed For \$40 Million Over Five Years*, PHILADELPHIA INQUIRER, June 14, 2005, at E1.

383. *Jimmy Rollins Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/t/rolliji01.shtml> (last visited Oct. 19, 2009).

384. *Kelly Johnson, Atlanta Braves Agree to Deal, Avoid Arbitration*, ESPN.COM, Feb. 19, 2009, <http://sports.espn.go.com/mlb/news/story?id=3915478>.

385. *Id.*

386. Jim Molony, *Reds Sign Phillips to Four-Year Deal: Contract Worth Reported \$27 Million Ends Threat of Arbitration*, MLB.COM, Feb. 15, 2008, [http://cincinnati.reds.mlb.com/news/article.jsp?ymd=20080215&content\\_id=2374258&vkey=spt2008news&fext=.jsp&c\\_id=cin](http://cincinnati.reds.mlb.com/news/article.jsp?ymd=20080215&content_id=2374258&vkey=spt2008news&fext=.jsp&c_id=cin).

387. Weeks asked for \$2.8 million while the Brewers offered \$2 million. Adam McCalvy, *Weeks Agrees to Pre-Arbitration Deal: Hart Lone Remaining Player Eligible for Hearing Process*,

Brewers lost him for the remainder of the season.<sup>388</sup> The always present possibility of an injury underscores the importance to teams of making the correct decisions about annual and multi-year contracts and enjoying good luck.

#### X. CASE STUDY - JOE CREDE

To conclude this analysis of the system of salary structures in baseball, it is helpful to add a discussion about Joe Crede. Crede was drafted by the White Sox in the fifth round in 1996 as a senior at Fatima High School in Westphalia, Missouri.<sup>389</sup> After stints in the minor leagues at the White Sox Gulf Coast Rookie League in 1996, Hickory in 1997, Winston-Salem in 1998, and Birmingham in 1999 and 2000, Crede received a late-season promotion in September 2000.<sup>390</sup> Crede began 2001 in Charlotte, and he was brought up in June and played in ten games before he was returned to Charlotte.<sup>391</sup> He was recalled in September and played in seven games at the end of the season.<sup>392</sup> At age 23, Crede had already spent six seasons in minor league ball making a modest salary while hoping for a chance to stick in the major leagues.

That chance finally materialized in 2002: Crede was in the minors at Charlotte until a late-July call-up, and played in a total of fifty-three games with the White Sox while hitting .285 with twelve home runs and a .826 OPS.<sup>393</sup> He enjoyed his first complete season in the major leagues in 2003. He hit nineteen home runs and knocked in 75 runs while batting .261.<sup>394</sup> For that season, Crede received \$315,000, slightly above the league minimum of

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MLB.COM, Feb. 3, 2009, [http://www.mlb.com/news/article.jsp?ymd=20090203&content\\_id=3794188&vkey=news\\_mil&fext=.jsp&c\\_id=mil](http://www.mlb.com/news/article.jsp?ymd=20090203&content_id=3794188&vkey=news_mil&fext=.jsp&c_id=mil).

388. Adam McCalvy, *Weeks Undergoes Surgery on Left Wrist; Brewers Second Baseman Has Metal Anchors Inserted*, MLB.COM, May 20, 2009, [http://milwaukee.brewers.mlb.com/news/article.jsp?ymd=20090520&content\\_id=4841502&vkey=news\\_mil&fext=.jsp&c\\_id=mil](http://milwaukee.brewers.mlb.com/news/article.jsp?ymd=20090520&content_id=4841502&vkey=news_mil&fext=.jsp&c_id=mil).

389. Crede was selection number 137 in round five. See *1996 MLB Draft History - Round 5*, MYMLBDRAFT.COM, <http://www.mylbldraft.com/1996/round5/> (Last visited Oct. 19, 2009).

390. Crede made his major league debut on September 12, 2000, against the Detroit Tigers. Crede has fifteen plate appearances in seven games for the White Sox. *Joe Crede Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/minors/player.cgi?id=crede-001jos> (last visited Oct. 19, 2009) [hereinafter *Joe Crede Statistics*]. Crede has spent five years in the minor leagues. *Id.* During his Rookie League campaign after his final year in high school, Crede played fifty-six games. *Id.* In 1999 at Birmingham, Crede played in only seventy-four games. *Id.*

391. *Id.*

392. *Id.*

393. *Id.*

394. *Id.*

\$300,000.<sup>395</sup> The following season, the White Sox increased his salary to \$340,000,<sup>396</sup> and Crede increased his home run total to twenty-one although his average—.239, RBIs total—69, and OPS—.717, were lower than his 2003 numbers.<sup>397</sup> Despite the downturn, Crede signed for \$400,000 for 2005,<sup>398</sup> and he responded with twenty-two home runs, sixty-two RBIs, a .252 batting average, and a .756 OPS.<sup>399</sup> At the end of the 2005 season, Crede had spent three full seasons in the major leagues and part of three other seasons with the White Sox. His salaries for those six seasons of major league baseball plus his minor league salaries were quite modest by baseball standards. His salary history matches that of so many players over the past two decades.

Prior to the 2006 season, Crede was finally eligible for arbitration.<sup>400</sup> He reached an agreement with the White Sox in January 6 for a base salary of \$2.68 million, with performance bonuses based upon plate appearances.<sup>401</sup> Crede collected all of the \$200,000 bonus money when he played in 150 games with 586 plate appearances, and posted a .283 batting average, 30 home runs, 31 doubles, 94 RBIs, and a .828 OPS.<sup>402</sup> All of these totals except games played were career highs for Crede.<sup>403</sup> Crede's excellent 2006 season allowed him and agent Scott Boras to use the leverage of arbitration to increase the third baseman's 2007 deal to \$4.94 million.<sup>404</sup> However, Crede suffered a back injury that required surgery after only appearing in 47 games in 2007 while hitting .216 with four home runs and 22 RBIs.<sup>405</sup>

Despite the career setback and with Crede in his last season of arbitration eligibility, the White Sox and Crede and Boras reached an agreement for 2008 at a base salary of \$5.1 million with numerous performance bonuses geared

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395. *Id.*

396. The minimum salary in 2004 was \$300,000. See *Arbitration Figures*, *supra* note 110.

397. *Joe Crede Statistics*, *supra* note 390.

398. The minimum salary in 2005 was \$316,000. See *Arbitration Figures*, *supra* note 110.

399. *Joe Crede Statistics*, *supra* note 390.

400. *Crede Avoids Arbitration, Gets 1-Year Deal*, CHI. TRIB., Jan. 18, 2006, at C3.

401. *Id.* Incentives for Crede included \$60,000 for 500 plate appearances and \$70,000 each for 525 and 550 plate appearances. *Cot's Baseball Contracts: Minnesota Twins*, *supra* note 218.

402. *Cot's Baseball Contracts: Minnesota Twins*, *supra* note 218; *Joe Crede Statistics*, *supra* note 383.

403. Crede played in one more game in 2003. *Joe Crede Statistics*, *supra* note 390.

404. *Id.*

405. Mark Gonzales, *Painful Decision: Surgery for Crede?; Back Injury Threatens Season, Sox Future*, CHI. TRIB., June 7, 2007, at C1; Mark Gonzales, *Losing Crede, Not All Hope; 3rd Baseman Likely Through For the Year*, CHI. TRIB., June 13, 2007, at C1; Mark Gonzales, *Just a Nip and Tuck, or Major Surgery?; With Sox Still Sinking, Big Decisions Await GM at Trade Deadline Writes Mark Gonzales*, CHI. TRIB., June 15, 2007, at C1.

towards rewarding Crede if he stayed healthy and played well.<sup>406</sup> When he played in only 97 games with 373 plate appearances, he failed to capitalize on any of his bonuses except for one for his selection to the All-Star Team.<sup>407</sup>

With the mounting toll of injuries and no longer being eligible for arbitration, Crede accepted a substantial pay cut in base salary to \$2.5 million from the Twins as a free agent on February 21, 2009.<sup>408</sup> He did work into the deal a possible total of \$4.5 million in performance bonuses spread over plate appearance benchmarks from 250 through 540.<sup>409</sup> Crede was only able to reach the first three benchmarks based upon his 367 plate appearances. Although he was successful in increasing his salary from \$2.5 million to \$4 million, an injury forced him to miss the end of the season while leaving a potential \$3 million in the Twins's coffers.<sup>410</sup>

## XI. CONCLUSION

Salary arbitration in baseball during the past thirty-five years has factored significantly into the escalation of salaries for individual players and helped substantially to drive up the salaries for all players regardless of their participation in the process. To understand the tasks of a general manager and other team administrators charged by ownership with meeting a certain annual team salary budget, it is critical to understand the dynamics of each of the three distinct groups of players at any one time. Careful consideration of which players will move from one group into another group and at what time, which players are likely to be ready for promotion from the minor leagues into the first group of a major league team, which players will be entering the free agent market, plus a team's needs at a particular position must all be carefully balanced to meet team salary goals. Since the initial year of the process when Charles Finley and Clark Griffith lamented the collectively bargained

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406. Boras, Crede, and the White Sox agreed to a total of \$300,000 based upon \$50,000 benchmarks for plate appearance targets of 400, 425, 450, 475, 500, and 525. Dave Van Dyck, *Sox Sign Crede, Gain Options; 3rd Baseman Must Prove He's OK After Back Surgery*, CHI TRIB., Jan. 18, 2008, at C3. Boras also negotiated performance bonuses of \$15,000 for a Silver Slugger Award; \$25,000 for a Gold Glove Award; \$25,000 for being voted onto the All Star team with \$15,000 for selection; \$50,000 for selection to *The Sporting News* All Star team; \$75,000 for a League Championship Most Valuable Player Award; \$100,000 for a World Series Most Valuable Player Award; and \$100,000 for being selected Most Valuable Player—\$90,000 for second place, \$80,000 for third place; \$70,000 for fourth place, and \$60,000 for fifth place.

407. *Joe Crede Statistics*, *supra* note 390.

408. Crede had six years and 124 days of credited service prior to the beginning of 2009. *Cot's Baseball Contracts: Minnesota Twins*, *supra* note 218.

409. Crede's performance benchmarks were \$500,000 each for 250, 300, 350, 400, 450, 475 plate appearances. The amount increased to \$750,000 for 515 and 540 plate appearances.

410. *See Joe Crede Statistics*, *supra* note 390.



agreement to allow single or final offer arbitration to determine salaries, the owners in baseball have often tried to rid themselves of a process that nearly always produces significant gains annually for players on every team. For Marvin Miller and the Players Association, the system that they bargained for in 1973 has created a foundation that works together with limited free agency every year to produce a salary structure that has made many baseball players wealthy men. In more recent years, the introduction of the “Super Twos” and the “file-and-go” strategy has added layers to a rich history involving over 3,100 filed cases and 487 hearings.<sup>411</sup> Baseball’s system of arbitration is incredibly successful at one of the major goals of the system; far more often than not the two sides reach an agreement without resorting to the single decision that an arbitration panel must make. The panel’s decision is simple and binary; they either choose the player’s request or the team’s offer. Rather than submit the decision to another party, both sides typically prefer to reach a compromise. The system produces myriad stories for players and teams alike, and every year it produces an off-season drama and becomes a factor in team decisions throughout the regular season. It is, indeed, one of the many “games within the game” that continues to perplex and bemuse fans, while becoming a substantial part of the planning process for teams and players’ representatives.

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411. See *2009 MLB Salary Arbitration Vital Stats*, BIZOFBASEBALL.COM, [http://www.bizofbaseball.com/.index.php?option=com\\_content&view=article&id=2974:2009-mlb-salary-arbitration-vital-stats&catid=66:free-agency-and-trades&Itemid=153](http://www.bizofbaseball.com/.index.php?option=com_content&view=article&id=2974:2009-mlb-salary-arbitration-vital-stats&catid=66:free-agency-and-trades&Itemid=153) (discussing hearings, but not filed cases) (last visited Oct. 26, 2009).

## APPENDIX CHART 1

## MAJOR LEAGUE BASEBALL SALARY ARBITRATION

PLAYERS AND TEAMS WHO EXCHANGED NUMBERS BUT SETTLED BEFORE  
A HEARING*Results 2004-2009*

| Year   | Multiyear Deals | Above Midpoint | At Midpoint | Below Midpoint | Total       |
|--------|-----------------|----------------|-------------|----------------|-------------|
| 2004   | 5               | 1              | 6           | 8              | 20          |
| 2005   | 8               | 3              | 5           | 21             | 37          |
| 2006   | 7               | 8              | 9           | 14             | 38          |
| 2007   | 10              | 4              | 12          | 22             | 48          |
| 2008   | 10              | 2              | 7           | 21             | 40          |
| 2009   | 11              | 5              | 11          | 16             | 43          |
| Totals | 51<br>23%       | 23<br>10%      | 50<br>22%   | 102<br>45%     | 226<br>100% |

## APPENDIX CHART 2

## 2009 MAJOR LEAGUE BASEBALL SALARY ARBITRATION

PLAYERS AND TEAMS WHO EXCHANGED NUMBERS BUT SETTLED BEFORE A  
HEARING

| Player                | Team                     | 2008<br>Salary | Team<br>Offer | Player<br>Request | Midpoint  | Settled<br>Amount | At, Above or<br>Below the<br>Midpoint |
|-----------------------|--------------------------|----------------|---------------|-------------------|-----------|-------------------|---------------------------------------|
| Rick<br>Ankiel        | St. Louis<br>Cardinals   | 975,000        | 2,350,000     | 3,300,000         | 2,825,000 | 2,825,000         | At Midpoint                           |
| Garrett<br>Atkins     | Colorado<br>Rockies      | 4,440,000      | 6,650,000     | 7,950,000         | 7,300,000 | 7,050,000         | Below                                 |
| Willy<br>Aybar        | Tampa Bay<br>Rays        | 401,200        | 900,000       | 1,050,000         | 975,000   |                   | Multiyear Deal                        |
| Brian<br>Bannister    | Kansas City<br>Royals    | 421,000        | 1,450,000     | 2,025,000         | 1,737,500 | 1,737,500         | At Midpoint                           |
| Brian<br>Bruney       | New York<br>Yankees      | 725,000        | 1,100,000     | 1,550,000         | 1,325,000 | 1,250,000         | Below                                 |
| Marlon<br>Byrd        | Texas<br>Rangers         | 1,800,000      | 2,700,000     | 3,600,000         | 3,150,000 | 3,060,000         | Below                                 |
| Melky<br>Cabrera      | New York<br>Yankees      | 461,200        | 1,200,000     | 1,700,000         | 1,450,000 | 1,400,000         | Below                                 |
| Shawn<br>Camp         | Toronto<br>Blue Jays     | 405,000        | 700,000       | 950,000           | 825,000   | 750,000           | Below                                 |
| Justin<br>Duchscherer | Oakland<br>A's           | 1,330,000      | 3,000,000     | 4,600,000         | 3,800,000 | 3,900,000         | Above                                 |
| Chad<br>Durbin        | Philadelphia<br>Phillies | 980,000        | 1,350,000     | 1,950,000         | 1,650,000 | 1,635,000         | Below                                 |
| Edwin<br>Encarnacion  | Cincinnati<br>Reds       | 450,000        | 2,550,000     | 3,700,000         | 3,125,000 |                   | Multiyear Deal                        |

|                 |                               |            |            |            |            |           |                |
|-----------------|-------------------------------|------------|------------|------------|------------|-----------|----------------|
| Andre Ethier    | Los Angeles Dodgers           | 424,500    | 2,650,000  | 3,750,000  | 3,200,000  | 3,100,000 | Below          |
| Pedro Feliciano | New York Mets                 | 1,040,000  | 1,350,000  | 1,950,000  | 1,650,000  | 1,612,500 | Below          |
| Prince Fielder  | Milwaukee Brewers             | 670,000    | 6,000,000  | 8,000,000  | 7,000,000  |           | Multiyear Deal |
| Jeff Francoeur  | Atlanta Braves                | 460,000    | 2,800,000  | 3,950,000  | 3,375,000  | 3,375,000 | At Midpoint    |
| Geoff Geary     | Houston Astros                | 1,125,000  | 1,425,000  | 2,100,000  | 1,762,500  | 1,700,000 | Below          |
| Zack Greinke    | Kansas City Royals            | 1,475,000  | 3,400,000  | 4,400,000  | 3,900,000  |           | Multiyear Deal |
| Matt Guerrier   | Minnesota Twins               | 950,000    | 1,200,000  | 1,750,000  | 1,475,000  | 1,475,000 | At Midpoint    |
| Corey Hart      | Milwaukee Brewers             | 444,000    | 2,700,000  | 3,800,000  | 3,250,000  | 3,250,000 | At Midpoint    |
| Shawn Hill      | Washington Nationals          | 402,000    | 500,000    | 775,000    | 637,500    | 775,000   | Hearing        |
| Ryan Howard     | Philadelphia Phillies         | 10,000,000 | 14,000,000 | 18,000,000 | 16,000,000 |           | Multiyear Deal |
| Macier Izturis  | Los Angeles Angels of Anaheim | 1,200,000  | 1,400,000  | 1,885,000  | 1,642,500  | 1,600,000 | Below          |
| Conor Jackson   | Arizona D'backs               | 419,500    | 2,450,000  | 3,650,000  | 3,050,000  | 3,050,000 | At Midpoint    |
| Mike Jacobs     | Kansas City Royals            | 395,000    | 2,750,000  | 3,800,000  | 3,275,000  | 3,275,000 | At Midpoint    |
| Kelly Johnson   | Atlanta Braves                | 430,000    | 2,350,000  | 3,300,000  | 2,825,000  | 2,825,000 | At Midpoint    |
| Casey Kotchman  | Atlanta Braves                | 1,450,000  | 2,475,000  | 3,250,000  | 2,862,500  | 2,885,000 | Above          |

|                     |                                     |           |           |           |           |           |                |
|---------------------|-------------------------------------|-----------|-----------|-----------|-----------|-----------|----------------|
| Jason<br>Kubel      | Minnesota<br>Twins                  | 1,300,000 | 2,400,000 | 3,400,000 | 2,900,000 |           | Multiyear Deal |
| Ryan<br>Ludwick     | St. Louis<br>Cardinals              | 421,000   | 2,800,000 | 4,250,000 | 3,525,000 | 3,700,000 | Above          |
| Paul<br>Maholm      | Pittsburgh<br>Pirates               | 424,500   | 2,650,000 | 3,800,000 | 3,225,000 |           | Multiyear Deal |
| John<br>Maine       | New York<br>Mets                    | 450,000   | 2,200,000 | 3,000,000 | 2,600,000 | 2,600,000 | At Midpoint    |
| Nick<br>Markakis    | Baltimore<br>Orioles                | 455,000   | 2,900,000 | 5,000,000 | 3,950,000 |           | Multiyear Deal |
| Nate<br>McLouth     | Pittsburgh<br>Pirates               | 425,500   | 2,750,000 | 3,800,000 | 3,275,000 |           | Multiyear Deal |
| Dioner<br>Navarro   | Tampa Bay<br>Rays                   | 432,500   | 2,100,000 | 2,500,000 | 2,300,000 | 2,100,000 | Hearing        |
| Scott<br>Olsen      | Washington<br>Nationals             | 405,000   | 2,500,000 | 3,500,000 | 3,000,000 | 2,800,000 | Below          |
| Wandy<br>Rodriguez  | Houston<br>Astros                   | 451,000   | 2,250,000 | 3,000,000 | 2,625,000 | 2,600,000 | Below          |
| Ervin<br>Santana    | Los Angeles<br>Angels of<br>Anaheim | 445,000   | 3,600,000 | 4,325,000 | 3,962,500 |           | Multiyear Deal |
| George<br>Sherrill  | Baltimore<br>Orioles                | 1,000,000 | 2,200,000 | 3,400,000 | 2,800,000 | 2,750,000 | Below          |
| Brian<br>Tallett    | Toronto<br>Blue Jays                | 640,000   | 950,000   | 1,300,000 | 1,125,000 | 1,015,000 | Below          |
| Mark<br>Teahen      | Kansas City<br>Royals               | 2,337,500 | 3,050,000 | 3,850,000 | 3,450,000 | 3,575,000 | Above          |
| Dan<br>Uggla        | Florida<br>Marlins                  | 417,000   | 4,400,000 | 5,350,000 | 4,875,000 |           | Hearing        |
| Justin<br>Verlander | Detroit<br>Tigers                   | 1,130,000 | 3,200,000 | 4,150,000 | 3,675,000 | 3,675,000 | At Midpoint    |

|                 |                       |           |           |           |           |           |                |
|-----------------|-----------------------|-----------|-----------|-----------|-----------|-----------|----------------|
| David Weathers  | Cincinnati Reds       | 2,750,000 | 3,000,000 | 4,600,000 | 3,800,000 | 3,400,000 | Below          |
| Rickie Weeks    | Milwaukee Brewers     | 1,056,000 | 2,000,000 | 2,800,000 | 2,400,000 | 2,450,000 | Above          |
| Jayson Werth    | Philadelphia Phillies | 1,700,000 | 3,000,000 | 4,000,000 | 3,500,000 |           | Multiyear Deal |
| Josh Willingham | Washington Nationals  | 405,000   | 2,550,000 | 3,600,000 | 3,075,000 | 2,950,000 | Below          |
| Ryan Zimmerman  | Washington Nationals  | 465,000   | 2,750,000 | 3,900,000 | 3,325,000 | 3,325,000 | At Midpoint    |

League minimum salary in 2008 = \$390,000

League minimum salary in 2009 = \$400,000

#### Totals

Settled: 46 (including 3 hearings)

Multiyear deals: 11

Above: 5

Midpoint: 11

Below: 16

